S. HRG. 104–447

ENTREPRENEURSHIP IN AMERICA: HOW GOVERNMENT REGULATIONS STIFLE JOB CREATION AND SMALL BUSINESS GROWTH

HEARING

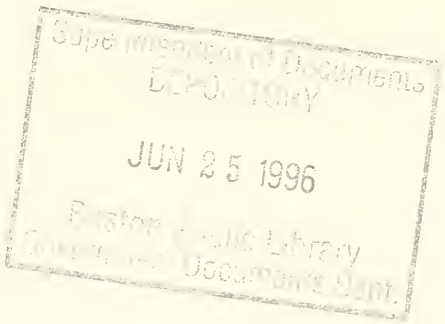
BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

FEBRUARY 14, 1996



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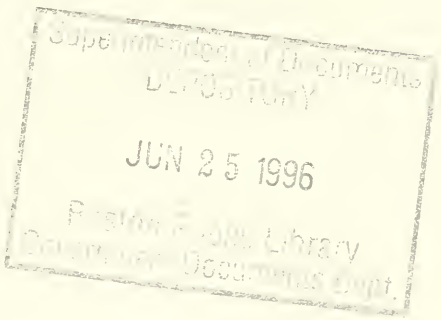

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ENTREPRENEURSHIP IN AMERICA: HOW GOVERNMENT REGULATIONS STIFLE JOB CREATION AND SMALL BUSINESS GROWTH

WEDNESDAY, FEBRUARY 14, 1996

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The Committee met, pursuant to notice, at 10:06 a.m., in the Lecture Hall, room 117, Georgia Tech Student Services Building, 353 Ferst Street, Atlanta, Georgia, the Honorable Christopher S. Bond, Chairman of the Committee, presiding.

Present: Senators Bond and Coverdell.

OPENING STATEMENT OF THE HONORABLE CHRISTOPHER S. BOND, CHAIRMAN, COMMITTEE ON SMALL BUSINESS, AND A UNITED STATES SENATOR FROM MISSOURI

Chairman BOND. The U.S. Senate Committee on Small Business will now come to order. It is really a pleasure for me to be here in Atlanta for another of our series of hearings on "Entrepreneurship in America." We have been holding field hearings across the United States, and I particularly enjoy coming back to Atlanta. I spent a very pleasant year here over 30 years ago when I clerked for Judge Tuttle on the Fifth Circuit Court of Appeals. I see my old friend Carl Cofer, who got into a little law business at that time and has been a good friend, as I see other good friends that I have known from a long time ago, but I will have to say that Atlanta has changed a great deal since I spent time here 30 years ago.

It is a great pleasure to be with Senator Paul Coverdell, who is responsible for us holding this hearing and requested that we make this trip and have an opportunity to hear from the men and women in small business in Georgia, who are making things happen, creating jobs and creating growth. Senator Coverdell is a great contributor to the Small Business Committee and a steady supporter of the small business agenda. So I extend a special thanks to Senator Coverdell, and also to your staff, for the arrangements and for the special opportunity you have afforded us to hear the ideas of so many of your constituents.

I might also say that we are very fortunate to have the senior Senator from Georgia, Senator Sam Nunn, on the Small Business Committee. He has been a very active participant. When we finally figured out the date for this hearing, and when I could make it, Senator Nunn had a previous hearing that he had scheduled in Washington, so he was unable to make it, but he too has been a

very valued member of our Small Business Committee and one we are going to miss next year.

I think that Congress must take responsibility for encouraging entrepreneurship and making sure the Federal Government does not stifle the small and growing business sector. This is the sector, as we know, that provides tomorrow's innovative products and new jobs. Unless we are continually vigilant, too many careless and excessive regulatory and taxation burdens will snuff out the thriving entrepreneurial spirit in this country. Preserving and strengthening this entrepreneurial spirit is an essential ingredient in the formula of economic opportunity for America's future generations.

I do not know about you, Paul, but as I talk to people around my home State of Missouri, so many people come up and say, "I am in small business and I do not feel we really have our voices heard in Washington." The whole idea behind these hearings is to come out and make it more convenient for small businesses and groups of small businesses to present their views and their concerns to us.

I think that those of you in small business probably do not know the stark figures, but for the rest of us, it is important to note that the cost of government regulations is over $500 billion a year, somewhere around $6,000 per family annually. According to the Small Business Administration, small businesses spend 1 billion hours just filling out government paperwork. If you are a small business manufacturer, with less than 20 employees, the figures we have are that the cost of government regulations amounts, on average, to $5 per hour per employee. So whatever you are paying that employee, add $5 per hour for the cost of government regulations. Well, those are the kinds of things that make it difficult for small businesses to grow. I think it is time that we ensure that the Federal Government is a friend, not a foe, of small business.

We did achieve the passage and signing into law last year of the Paperwork Reduction Act that sets a governmentwide goal to reduce paperwork by 10 percent this year and 5 percent the year after. We are going to be monitoring that in the Small Business Committee.

We also are working and trying to get passed some strengthening for the Regulatory Flexibility Act. I introduced legislation to accomplish this last year and we are going to get that in some form or other to the White House for signature this year.

Senator Dole's regulatory reform bill had that in it, along with risk assessment, requiring the use of sound science and cost-benefit analysis. Unfortunately, that has been temporarily slowed up by a filibuster, but we are going to get something done on regulatory reform.

I also am going to push for a means of ensuring that we get a better handle on the way that government officials enforce regulations. Too many small businesses say it is not just the regulations, it is the fact that once in awhile you find an examiner or an inspector who absolutely wants to impose a fine or take punitive action rather than trying to work with you to figure out how to make things better. I have introduced the Small Business Regulatory Enforcement Fairness Act to make some fundamental changes and re-

quire plain English regulations. It sounds simple, but it is not always that way.

In this bill, we set up a Small Business and Agricultural Enforcement Ombudsman in the Small Business Administration to gather complaints of regulatory excesses and provide ratings of regulatory agencies enforcement personnel. The bill also makes it easier for a small business who challenges a government regulatory action successfully to recover expenses and legal fees when they are protecting their interests against an over-reaching government action.

The Small Business Committee will be holding a formal hearing on the bill when we return to Washington and I am hoping we can muster the votes to send it to the full Senate and pass it out of the Senate fairly soon, to make it one of the positive items on the agenda for small business this year.

I am very excited about the opportunities we have to improve our service to small business, but most of all, I am very appreciative of the time, thought and effort that has already gone into the preparation of the testimony for today. Paul, this is some of the best written testimony we have had presented. I am looking forward to it, and I would like to turn the microphone over to you now for comments you wish to make, and also for the introduction of our first panel, with sincere thanks for all your help in putting this together.

[The prepared statement of Chairman Bond follows:]

PREPARED STATEMENT OF
CHAIRMAN CHRISTOPHER S. "KIT" BOND
SENATE COMMITTEE ON SMALL BUSINESS
ATLANTA, GEORGIA
FEBRUARY 14, 1996

This hearing of the United States Senate Committee on Small Business will now come to order. It is a pleasure to be here in Atlanta for another of the series of "Entrepreneurship in America" field hearings I have been holding throughout the country during the 104th Congress. I am especially pleased to be here in Atlanta today with Senator Coverdell. He makes a valuable contribution to our deliberations in the Small Business Committee, and he has been a steady supporter of our small business agenda. So I want to say thank you, Senator Coverdell, and to your staff, for arranging for us to have this special opportunity for the Committee to hear the ideas and concerns of your constituents.

I believe Congress must take responsibility for encouraging entrepreneurship and making sure the federal government does not stifle the small and growing business sector that will provide tomorrow's innovative products and new jobs. Unless we remain vigilant, too many careless and excessive regulatory and taxation burdens will snuff out the thriving entrepreneurial spirit in this country. Preserving and strengthening this entrepreneurial spirit is an essential ingredient in the formula of economic opportunity for America's future generations.

Government regulations cost individuals and businesses more than $500 billion annually. According to the Small Business Administration, small businesses spend one billion hours simply filling out government paperwork. Small manufacturing businesses of less than 20 employees spend the equivalent of $5 per hour in lost employee wages on regulatory compliance. When government policy is taking $10,000 per year out of the pockets of these small business employees, it is time to stop and examine the situation very carefully to see if we are really getting meaningful benefits from these costly rules.

Our government needs to be a friend of small business, not an enemy of growth and new jobs. In the Senate, we are laying the foundation for a fundamental and sustained government reform effort to protect small and growing businesses from excessive and unnecessary government burdens and to reign in overzealous federal government regulators. It will not be a quick fix, but we have already taken several significant steps in this direction.

First, the Paperwork Reduction Act of 1995 became law last year. Among other features, this bill sets a government-wide goal to reduce paperwork by 10% this year and next year, then 5% each year thereafter. I will be asking the Small Business Committee in the Senate to monitor agency compliance with these new requirements, and we will report our findings later this year.

Second, and equally important for small business, is adding some meaningful judicial enforcement provisions to the Regulatory Flexibility Act. Last year I introduced legislation to accomplish this and I believe the Congress will send it to the White House this year.

Third, throughout 1995, many of us in the Senate worked hard to pass Senator Dole's bill to require risk assessment, using sound science, and cost-benefit analysis to evaluate proposed new regulations. A Democratic filibuster slowed us down, but I am hopeful we will have better luck this year.

These three bills focus on changing the way agencies *enact* regulations. I also want to begin to reform the way government officials *enforce* federal regulations. During our Small Business Committee hearings around the country, as I have listened to businessmen and women with real life problems, I have become convinced that the enforcement practices of federal agencies often present a problem at least as troublesome as the regulations themselves. To address this I have introduced the Small Business Regulatory Enforcement Fairness Act, making fundamental changes in the way regulatory agencies interact with small businesses.

First, this bill will help small businesses understand what is expected of them. I want small businesses to know that if they are playing by "easy to understand" rules of the game contained in "Plain English" small business compliance guides, then they have nothing to fear from federal inspectors. Sound like common sense? It should be but, for too long, agencies like EPA and OSHA have refused to communicate to small businesses how they can avoid the threat of regulatory action. This bill will change that.

Second, the bill sets up a Small Business and Agriculture Enforcement Ombudsman at the Small Business Administration to receive confidential complaints and comments from small businesses about their dealings with federal regulators. This Ombudsman also will coordinate the activities of regional Small Business Regulatory Fairness Boards, made up of small business people around the country that will volunteer their time to rate and critique the inspectors or government lawyers that work with small businesses in their region. Their ratings will be published in a public report card with a separate grade for each agency.

Third, the bill will create some financial accountability at federal agencies. I want to "level the playing field" for small businesses when they disagree with a proposed fine or penalty by making it affordable for them to challenge the government when the agency is being unreasonable. The bill will allow small businesses to recover their expenses and legal fees from the government when enforcers make excessive demands for fines or penalties that can not be sustained in court.

The Small Business Committee will hold a formal hearing on this bill when we return to Washington. I hope we can vote to send the bill to the full Senate fairly soon after the hearing so this can be one of the positive items Congress delivers for small business this year.

I am very excited about the opportunities we have to improve the quality of life today for small and growing businesses and to give encouragement to the young entrepreneurs of tomorrow. Your input into this process is vitally important. I have learned many times over that the best ideas come from the people back home in the real world, not from the professionals in Washington. I applaud you for being here and participating in this field hearing of the Committee, and I look forward to hearing your views and comments so we may find ways to work together to foster the spirit of Entrepreneurship in America.

OPENING STATEMENT OF THE HONORABLE PAUL COVERDELL, A UNITED STATES SENATOR FROM GEORGIA

Senator COVERDELL. Well, thank you, Senator Bond. I want to return the accolade. You have been a sterling Chairman of the Small Business Committee and a champion for small business and practical business and sound policy for many years in the U.S. Senate. Having you as the Chairman of the Small Business Committee is something that the entire community should be grateful for. You have done an outstanding job as a champion of small business, and business in general, in your career in the U.S. Senate and as Governor of the great State of Missouri. We do have some relationship there in that I am a graduate of the University of Missouri.

Chairman BOND. I did not think you wanted me to tell that.

Senator COVERDELL. Oh, no, I acknowledge it.

I also want to thank Andrew Harris, Government Relations, here at Georgia Tech, for making these facilities available to us. We are very appreciative of Georgia Tech and the role it plays here in our community, and very pleased to have the opportunity to be back on the Tech campus.

I am going to make just a few remarks with regard to small business in general, then introduce the panel, and I would hope the panel would try to keep your oral statements to about 5 minutes each, and of course the written statements will be inserted into the record, so that we will have ample time for dialog as we go through the program.

I want to just reiterate some of the points that were made by the Chairman. The bottom line here is that America's families are paying either in direct taxes or debt, $1.5 trillion a year of the economy moving to the Federal Government. To put the regulatory burden in perspective, the regulatory burden adds another half a trillion to that consumption from the private sector. In other words, the Government is spending $1.5 trillion and in addition to that, the American people, businesses, families are contributing another half a trillion in regulatory burden. That equates to about $6,000 per family that they are expending on top of their tax burden to facilitate the ever-increasing regulatory reach in America. Those are enormous figures. I do not know that the average family ever steps back and realizes that. I think we need to—you know, if they thought they were paying—the average family in Georgia is at about $33,000 a year, and if they ever realized that they were paying 20 percent of their income to assure the regulatory practices in the country, they might step back for a moment and say well, wait a minute here, is that really the kind of contribution I should be making to assure regulation in the country.

I think when people think about business or hear the word business in the Nation's capital or anywhere else, they think about big business. It is always characterized as big business. But 60 percent of America's corporations have four employees or less, and 94 percent of them have 50 employees or less, which is why the regulators geared to think of large business do not realize the enormous disproportionate pressure that this puts on small businesses themselves. The regulatory burden falls—I have got the figure here somewhere, it is like—give me just a second—what is it, 80 percent? Yeah, about 80 percent of the regulatory burden dispropor-

tionately falls on the small businesses. They are the least equipped to deal with the regulatory burden. They do not have a floor of accountants, they are not IBM, they are not General Motors. My guess is that every small business every day is violating who knows how many dozens of Federal regulations. They have no way of even knowing what they are supposed to comply with, which leaves them vulnerable to an errant regulatory. It is intimidating and it is creating fear in the workplace, and this is not an appropriate standard for this country.

When we were debating the Nunn-Coverdell regulatory relief amendment to the regulatory reform bill, which has failed to cut off cloture by I guess two votes, those in opposition to the amendment kept bemoaning the enormous pressures it would create on government agencies to have to deal with explaining the cost-benefits of a regulation, and for periodic review and for judicial review. Over and over and over opponents to the amendment spoke of this gridlock that it would create for the Government. It was always just mind-boggling to me. One after the other came to the floor and talked about this enormous pressure it would put on government workers and the Government agencies. The question that it begged was well, what in the world do you think it is doing to the average American business who does not have 20 floors of employees to process this activity. It is usually a mother and son or father and two sons, most of these are family businesses.

I told the story at that time of walking into our small family business some 20 years ago and my mother, who was responsible for our accounting, was just staring straight ahead. I said what is the matter? She had a ream of government forms in front of her and she was absolutely scared to death that she was going to make a mistake that would somehow threaten the viability of our family and our business. That was my first confrontation, among many. This is just not the way the relationship should be between American business and its Government.

I am going to stop with those general remarks. Again, I thank the Chairman for facilitating this field hearing, for the work he does on behalf of small business and for his visit to Atlanta and to the State of Georgia.

I am going to introduce the first panel: Kelly McCutchen, who is the executive director of the Georgia Public Policy Foundation, is joining us; Dr. Gerald Gay, chairman of Georgia State University College of Business Administration Department of Finance; Mr. Bert Fridlin, State director of the National Federation of Independent Business, and Mr. Marty Kogon, chairman of Central Metals Company and the chairman of my own Small Business Task Force in terms of our business task force. He has been a very faithful servant to that effort.

I welcome each of you here today and let us begin in the order in which I introduced you. Kelly, would you please proceed.

STATEMENT OF KELLY MCCUTCHEN, EXECUTIVE DIRECTOR, GEORGIA PUBLIC POLICY FOUNDATION, ATLANTA, GEORGIA

Mr. MCCUTCHEN. Senator Bond, Senator Coverdell, it is a pleasure to be here today to testify on this important subject.

Last year, Marty and Senator Coverdell's Small Business Advisory Task Force came to the Georgia Public Policy Foundation and asked us for help in identifying the impact of State and Federal regulations on small businesses in Georgia. The Georgia Public Policy Foundation is an independent, non-partisan organization dedicated to keeping all Georgians informed about their government and to providing practical ideas on key public policy issues. After agreeing to help, we enlisted the aid of the Georgia NFIB and an expert in the area of regulations, Dr. Gerry Gay, chairman of the Finance Department of Georgia State University. We then surveyed over 100 Georgia small businesses. I have these surveys with me today. We had a great array of responses from manufacturers to contractors to dentists, grocers, farmers and restaurant owners.

Although this was not a scientific survey, based upon the responses we received the following is clear: (1) State and Federal regulations are placing a sizable burden on Georgia small businesses, both in compliance costs and in litigation costs; (2) common sense reform of regulations can benefit the economy by increasing the number of jobs that small businesses are able to create; and (3) there is overwhelming support for a thorough review of all new and existing regulations.

Now what specifically did we find out in the survey? Several things.

First, the estimated cost of regulations as a percentage of sales was approximately 1.5 percent. This falls roughly in line with previous studies.

Second, almost one of every four (24 percent) of the respondents indicated that they had been involved in a regulation-related lawsuit.

Third, more than half (54 percent) of the respondents said that they would have hired additional employees in the last 3 years if not for the cost of government regulations.

And, fourth, five respondents indicated that they had previously owned a business that had gone under due in part to the cost of government regulation.

All three of the survey's proposed recommendations received broad support. These proposals included: (1) requiring all agencies to regularly review existing regulations, 98 percent support; (2) requiring a cost/benefit analysis for all new regulations, 93 percent support; and (3) compensating property owners for regulatory "takings", 80 percent support.

What regulations were cited as most burdensome?

Well, on the State level, employee-related regulations such as workers' comp and unemployment insurance were the primary complaints, while taxes and tax reporting led the list of Federal problems. They were closely followed by regulations from OSHA, the EPA and the EEOC.

From the results of the survey and from conversations with small business owners on the task force and from all over the State, there is a great frustration with the current regulatory system. I think it can be put into four general categories:

(1) Subjective standards. This alludes to the point you made, Senator Bond. For example, what is viewed as acceptable by one

government inspector may be determined to be a violation in the eyes of another.

(2) There is inconsistency between State and Federal requirements and paperwork.

(3) Counter-productive bureaucracy. For example, a well-meaning business owner who self-reports a hazardous waste spill may be required to wait for 2 or 3 years before he can get a permit to clean up the site. In addition, due to our inflexible and impersonal system, punitive fines are often levied when business owners have acted in good faith.

(4) Compliance costs are very burdensome. These can be broken into four different areas also.

(A) Time spent developing procedures to ensure that compliance is maintained. Then there is the time spent monitoring that compliance.

(B) Time spent keeping up-to-date with the constantly changing regulations.

(C) Time and the cost involved in taking corrective actions to bring the company into compliance.

(D) Management's opportunity cost. Although many larger firms can afford full-time staff attorneys and compliance officers, it is often the small business owner himself who ends up spending his time to do all the tasks we just mentioned. Every hour spent on this kind of work is an hour that he or she is not out in the market selling his or her product. Unfortunately, it is very difficult to measure this cost, but I think it is quite significant.

More than 150 years ago, de Tocqueville warned of an American Government that in its zeal to do good works "covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate."

Unfortunately, de Tocqueville's quote has become a self-fulfilling prophecy. For example, I recently read Thomas Hopkins, a notable researcher, who noted that "The Lord's Prayer is 66 words, the Gettysburg Address is 286 words, there are 1,322 words in the Declaration of Independence, but government regulation on the sale of cabbages total 26,911 words."

In light of this, I hope the work of this Committee will provide the impetus needed to bring some common sense to our regulatory framework.

Thank you.

Senator COVERDELL. Thank you, Kelly, that was very good testimony. I would hope that we could make sure that the results of this survey could be made available to the other Members of the Committee.

Chairman BOND. That will be made part of the record of this hearing, and we appreciate very much you submitting it for our use.

Senator COVERDELL. Very good piece of work.

Dr. Gay.

STATEMENT OF GERALD D. GAY, CHAIRMAN AND PROFESSOR OF FINANCE, GEORGIA STATE UNIVERSITY, ATLANTA, GEORGIA

Dr. GAY. Thank you. Senators Bond and Coverdell, I would like to thank you for your continued interest in this important issue for all Georgians. I welcome the opportunity to participate in this collaborative effort between the Georgia Public Policy Foundation, the Georgia NFIB and Senator Coverdell, your own Small Business Advisory Task Force.

As you mentioned, I am currently chairman and professor of finance at Georgia State University here in Atlanta. My interest in regulation was heightened from experience gained during a 3-year stint at one of Washington's Federal regulatory agencies, the Commodity Futures Trading Commission. During that time, it was my pleasure to also serve as the agency's regulatory liaison to the White House in conjunction with President Bush's 1992 Regulatory Reform Initiative.

This Committee is well aware of two earlier important studies highlighting the burden of regulation on small business. These include the 1992 Joint Economic Committee-GOP study conducted by Professors Galloway and Anderson and the more recent Small Business Administration study performed in conjunction with Professor Hopkins. These reports document clearly that new regulations in recent years have stifled small business as an engine of job creation, and that small business bears a disproportionate share of our Nation's total regulatory burden.

The survey before us today complements these earlier studies and furthers our understanding of the detrimental effects of regulation on small business. Whereas the earlier studies analyze regulatory costs from a macro perspective, this study takes a micro view, based on individual responses representing a cross-section of Georgia businesses. The findings provide firsthand accounts of how burdensome regulations raise the cost of goods and services to Georgia consumers, lower its workers wages and increase unemployment. The popular description of regulatory costs as the so-called "hidden tax" was rather quite visible to these respondents.

Clearly, excessive regulation is of concern to all businesses—both large and small alike. Larger firms are sometimes able, as Kelly mentioned, to develop in-house expertise or to hire experts to comply with the mass of legal and technical maneuvering involved in the regulatory process. But small businesses in Georgia, as elsewhere, are at a particular disadvantage as many lack the financial resources to absorb excessive regulatory compliance costs. In addition, the survey suggests that managers must devote much of their valuable time and skills addressing regulatory problems rather than working on entrepreneurial or income-producing activities.

There is no silver bullet to provide a simple cure to this problem. Rather, stemming and rolling back the regulatory State requires a multifaceted approach that addresses the creation of new regulations as well as instills processes for the systematic review of existing regulations.

To address new regulations, let me suggest some potential measures that you may wish to pursue:

Strengthen the Regulatory Flexibility Act by, for example, requiring cost-benefit analysis, sound risk assessment and allowing judicial review.

Lessen agency discretion by substituting greater Congressional accountability.

We may consider imposing regulatory moratoriums.

Cutting agency budgets and staffs.

Adopting a Regulatory Budget whereby agencies are constrained by dollar caps on the amount of regulatory costs they may impose and are provided incentives or credits in terms of burdens removed.

To address existing regulations, steps to pursue may include:

Requiring sunset provisions for statutes, agencies and regulations.

Establishing a Regulatory Reduction Commission modeled after the Base Closing Commission whereby the Congress must vote up or down without amendment on a host of regulations deemed unnecessary.

Allowing greater incentive-based approaches to regulation such as "Worker Safety IRAs."

I would like to close with a quote from one of our country's earliest regulatory sages, who appears to have in mind the plight of the small businessman. In his "First Annual Message," Thomas Jefferson states, "A wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government."

Thank you, Senators, and I would be happy to answer any questions.

Senator COVERDELL. Dr. Gay, that is interesting. I used that very same quote at the Martin Luther King celebration in conjunction with freedom, which is of course what that quote relates to as well. Very interesting you would use the same quote today. Good quote.

Mr. Fridlin.

STATEMENT OF BERT FRIDLIN, STATE DIRECTOR, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, ATLANTA, GEORGIA

Mr. FRIDLIN. Thank you, Senator Coverdell. My name is Bert Fridlin. I am State director in Georgia for the National Federation of Independent Business, NFIB. NFIB is the Nation's largest small business advocacy organization; we have about 600,000 members nationwide and we have about 12,000 members in Georgia. Our typical member employs five people and grosses between $250,000 to $300,000 in annual sales. We have been in existence for about 53 years and called on a lot of small businesses to get them to join, and so in essence we basically mirror the industry breakdown of our membership in comparison with the SIC codes throughout the State and the country.

We worked with Senator Coverdell's Business Task Force and the Georgia Public Policy Foundation on the survey. I would like to bring out some of the items that were specifically mentioned there.

Just so you will know, according to the U.S. Bureau of Census County business patterns booklet, there are approximately 168,000 business establishments in Georgia; 53 percent of those have 4 or fewer employees each, 73 percent have fewer than 10 each, 86 percent have fewer than 20 each, 94 percent have fewer than 50 employees each, and 97 percent have fewer than 100 each.

You have had testimony from NFIB and other organizations in the past to illustrate the importance of small business to job creation in Georgia and in the Nation. Even though small businesses are creating many more jobs than large businesses, government regulations and paperwork emanating from Federal, State and local government agencies continue to have an adverse effect on small business owners. Every time they add an employee, there is more government paperwork. The cost to small business for compliance is greater than for large business.

The biggest concern of, I think, anyone who is starting a business today is whether they have completed all the necessary regulatory paperwork so that they will not get in trouble with the Government. Lucky for us, the entrepreneurial and independent spirit still wins the battle against fear of government regulators when most of our citizens start small businesses. What we need to do is we all need to work to boost the spirit and reduce the fear.

Whatever your committee can do to reduce the burden of regulations and paperwork would be welcomed by small businesses throughout the State of Georgia. We know both of you have worked long and hard to try to accomplish these things in Congress and we hope that you will continue.

Some of the items that were specifically mentioned in the survey follow:

The attitude of regulatory agencies should be changed to allow businesses adequate time to correct deficiencies found in inspections, rather than immediately levying fines or penalties. Small businesses especially need to use the money to make corrections rather than paying fines. OSHA and EPA regulatory requirements were the most mentioned.

A lot of talk about the Federal tax system and the need to simplify that, especially the income tax code.

Regulations affecting retirement plans for small businesses need to be simplified.

Underground storage tank regulations. Many owners are faced with closing their doors because of the inflexibility of these regulations.

Department of Transportation regulations on truck drivers and on trucks under 28,000 pounds.

Repetitious disclosures under the Fair Debt Collection Practices Act.

We need to change Superfund regulations so an innocent party cannot be required to pay for another's error.

We need to change monthly or quarterly reports to annual reports wherever possible.

The OSHA blood-borne pathogen rules are not completely relevant in a non-hospital environment.

We need to simplify independent contractor definitions and rules.

We need to rework regulations concerning non-attainment areas under the Clean Air Act. Are they now scientifically valid? That is a specific problem in the metro-Atlanta area. Some of our NFIB members in the manufacturing business where they use paint have run into real problems in that area.

We need to eliminate the Davis-Bacon Act and all its regulatory effects.

Postal audits on second class newspapers are cumbersome.

Americans with Disabilities Act regulations are too broad and need better definitions.

So these are some of the examples that were pointed out by the small business owners that answered the survey.

We urge you to continue your efforts to reduce and reform regulations on small businesses, to strengthen the Regulatory Flexibility Act and enact additional paperwork reforms and enact regulatory reform.

We are ready and willing to continue to share these situations. If you need to get in contact with some of these people that answered these surveys and the specific items I mentioned, I am sure that they would be very glad to talk to you.

Again, we appreciate you coming here to Atlanta to hear our concerns, and we will do anything we can to help you out.

Thank you very much.

Chairman BOND. Thank you, Mr. Fridlin.

Senator COVERDELL. Thank you, Bert.

I want to acknowledge a couple of people, Marty. Don Glass is here, who chairs our Timber Task Force on the Business Task Force, and Roy Cleveland is back here, who is on the Poultry Task Force. We appreciate you both being here today.

Marty.

STATEMENT OF MARTIN KOGON, CHAIRMAN, CENTRAL METALS RECYCLING COMPANY, ATLANTA, GEORGIA

Mr. KOGON. Thank you, Paul. I appreciate both you and Senator Bond being here and appreciate the opportunity to present to this hearing.

My name is Marty Kogon and I am chairman of Central Metals Recycling Company, and as you mentioned, I am Chairman of the Small Business Task Force that you have established.

Central Metals Recycling is a third generation family business started in 1912, and during those 84 years, the company has evolved and grown to where we now provide 132 people with full-time regular employment. Thus, we are classified at the large end of the small business spectrum.

In my remarks today, I want to focus on three themes:

(1) The concept of what we refer to as the "Compliance Tax," which, as has been mentioned, is the soft expense incurred by businesses to comply with all the Government regulatory and paperwork requirements, and its particular impact on the small businessman.

(2) The role of "regulatory creep" and its specific impact on my personal experiences in the recycling industry.

(3) Recommendations for minimizing the negative impact of the compliance tax by controlling regulatory creep.

Compliance tax is not a bill collected by the tax collector. Nor can it be seen in any particular line item on a company's P&L. The cost of compliance is buried through every department and in every activity that the companies do, and in particular, while it is hard for all businesses, it is particularly focused on the small businessman.

As has been mentioned—and I will not articulate all the comments I have in my written statement—the issues range all the way from lack of knowledge, lack of resources to lack of manpower to carry out. The area that has been mentioned earlier that I would like to emphasize as most important, the opportunity cost.

The entrepreneur, the owner/operator, is the key person who makes his company go and grow, and every hour devoted away from or diverted away from taking care of customers and helping your employees and improving your product or process is detrimental to the growth of that business and to the employment growth potential of that operation. In a small business, only the owner/operator can perform it.

The second half of that, the second key point in that regard is that too often when you are involved in any kind of a review, performance is secondary to documentation—paperwork is paramount when you go through an investigation. So that you could have a safety record which is the model of an industry, but if you have an OSHA review and your paperwork is not together, you get nailed. So I think one of the things that we need to look at is more emphasis on performance as opposed to paperwork.

The second point is a point that we refer to as regulatory creep. It exacerbates the plight of all businesses, but again especially the small businessman who has to keep up as things evolve.

Legislation once passed is not cast in stone. Congress typically passes broad themes and allows the agencies and regulators to implement regulations to follow the intent of Congress. The problem is that time marches on and these regulators have jobs to do. They come in to work every day and they say what am I going to do today? Over the years, different issues arise and situations occur, ofttimes in result of or in conjunction with legal battles which refine, clarify or reinterpret the law; i.e., regulatory creep.

With time, the additional regulations and refinements, coupled with case law, metamorphosize the legislation into something that is barely recognizable to the original intent. In each case, however, the regulators only standard is that their latest handiwork not be judged as arbitrary and capricious when compared with the original language of the legislation. This almost impossible standard affords the regulators the widest possible latitude.

A classic example is Superfund, which has a direct impact on my life as a recycler. The goals behind Superfund are admirable. No one wants a polluted environment or hazardous contaminates spoiling our land. But who could have dreamed that such a noble ideal would lead to such a real-life quagmire? Estimates range that from 70 to 90 percent of Superfund dollars are spent on legal and administrative fees, not on cleanup. That is just the Government expense. Recycling, which is recognized by all as one of the major tools in the fight for a cleaner and better environment, has been defined—by the regulators, not by Congress—as arranging for disposal, and therefore subject to Superfund.

If you ask the average American, they would tell you that recycling is the opposite of disposal and that we should support and promote recycling. If you ask Members of Congress did they vote to define recycling as equivalent to disposal, they would say no. Yet the regulators evolved a position, which in their minds defines recycling, which is the antithesis of disposal, as disposal. Thus every business like mine that recycles, every institution like my alma mater here, Georgia Tech, that recycles, every city like Atlanta, every State like Georgia, every Boy Scout and Girl Scout troop, every church, synagogue and civic group that recycles, is subject to the liability provisions of Superfund, and could be named as a PRP, a primary responsible party, and be faced with time distraction and legal expense and ultimately the joint and several cost of a Superfund cleanup—all for recycling.

A similar pattern is evolving with the Americans with Disabilities Act, as you see more and more definitions coming out of more and more types of disabilities. Again, a noble intent is being morphed into an unrecognizable maze of regulatory refinement. The Family Medical Leave Act is close behind. Regulatory creep is alive and well and each change requires a small business owner to change with it.

We must do something to tame the regulatory process and turn it into a tool of Congress rather than a master unto itself. Those of you more intimate with the process understand the subtleties far better than I, but some recommendations are as follows—and you have heard a few of them from Dr. Gay already.

(1) Apply a less stringent standard for challenging regulations than the arbitrary and capricious standard that now exists, so that you give less leeway to the regulators.

(2) Limit regulation promulgation to a specific time period with subsequent changes required to pass through some legislative review, or require that all regulations go through some legislative review, both the ones at the beginning as well as through time.

(3) Require that regulations pass some cost-benefit analysis, as has been mentioned already.

(4) Apply performance standards, not documentation standards, and/or apply a different level of standard, especially for documentation, to small business.

So in summary, the compliance tax hits hardest on the small business owner/operator who does not have the staff or the wherewithal to delegate the job to others. Thus, the organization's key asset is forced to allocate significant portions of time to areas other than growing the business, thereby creating jobs.

A major culprit is regulatory creep, which never allows the pot to stop simmering and thus never allows the owner/operator to fully focus his or her energy on creating and growing the business.

Thus, we must enact reforms which throttle the powers of the regulatory agencies and force them to develop regulations that truly meet the intent of Congress and do so in an orderly way.

If we do not alter the process, we shall see the small business sector—the largest generator of new jobs—become non-competitive. Should that happen, our society will become non-competitive and we will have failed. Thank you.

[The prepared statement of Mr. Kogon follows:]

Prepared Statement of Martin Kogon, Chairman, Central Metals Recycling Company
before the Committee on Small Business
February 14, 1996

My name is Martin Kogon, and I am Chairman of Central Metals Recycling Company. Central Metals Recycling is a third generation family business started in 1912. During those 84 years the company has evolved and grown to where we now provide 132 people with full time regular employment. Thus we are classified at the large end of the small business spectrum. The following are some interesting statistics about small business in general*.

99% of all U. S. firms are small businesses
companies with 1 to 99 employees account for 98.3% of American businesses
the average small business has $1.7 million in revenue and 8.3 employees
97% of small businesses are privately held
two thirds of all new jobs are created by small business

*Source: Institute for Small Business - Georgia State University

OVERVIEW

In my remarks I will comment on three basic themes:

The concept of the "Compliance Tax" which is the soft expense incurred by businesses to comply with governmental regulatory and paperwork requirements and its particular impact on small business.

The role of "regulatory creep" and its specific impact on my personal experiences in recycling.

Recommendations to minimize the negative impact of the compliance tax by controlling regulatory creep.

COMPLIANCE TAX

The compliance tax is not a bill collected by the tax collector. Nor can it be seen in any particular line item in a company's profit and loss statement. The cost of compliance is buried throughout an organization in every activity and in every department. This cost is hard on all businesses operating in the U.S. - but it is especially hard on small businesses whose very survival is based on the closeness of the owner/operators to their customers, employees, markets and production processes.

Unlike large corporations which have staff specialists to deal with labor law, environmental law, administrative procedures, etc., the small business owner/operator has only him or herself on which to depend. Thus the cost of this compliance tax hits hardest on the small business owner/operator who must read the endless stream of regulations and revisions and then try to understand their implication to his operation. All of this effort takes time away from customers, employees, markets, and production.

Once understood, these regulations must then be put into effect which means the owner/operator must take more of his time to develop the procedures required and even more

time for implementation. More and more mental and physical energy sapped away from the keys to success.

Unfortunately the problem does not stop there. For protection the owner/operator must create a paper trail to "prove" his compliance with whatever is being inspected. Performance is secondary to paper. The cost of compliance now includes documentation of meetings and training and sessions, and files - all of which must be reviewed by - who else? - the owner/manager to insure that the organization can withstand a review. More time stolen away.

Typically the owner/operator is the small company's best salesman and its production guru. The owner/operator who survives and prospers on his ability to stay close to his customers and employees, markets, and production processes is forced to divert precious time and energy and creativity to compliance issues because there is no one else in the organization who has the insight, concern or capability to do it. The result is a diminution of job growth and competitiveness vastly out of proportion to the hours devoted, because the job of compliance conformity in a small business can only be done by the one person who is the mover and shaker of the organization - the owner/operator/entrepreneur.

REGULATORY CREEP

One of the key contributors to this situation which exacerbates the plight of all businesses - but especially the small business - is the role of the regulators. Legislation once passed is not cast in stone. Congress typically passes broad themes and allows the agencies and regulators to implement regulations which follow the "intent" of Congress. The problem is that time marches on and these regulators have jobs to perform and to justify. Over the years different issues arise and situations occur - ofttimes as a result of or in conjunction with legal battles - which "refine" or "clarify" or "re-interpret" the law (e.g. regulatory creep). Over the years the additional regulations and refinements coupled with case law metamorphoses the legislation into something that is barely recognizable to the original intent. In each case however, the regulators only standard was that their latest handiwork not be judged "arbitrary and capricious" when compared with the original language of the legislation. This almost impossible standard affords the regulators the widest possible latitude.

A classic example is Superfund - which has a direct impact on my life as a recycler. The goals behind Superfund are admirable. No one wants a polluted environment or hazardous contaminates spoiling our land. Who could have dreamed that such a noble ideal would lead to such a real life quagmire! Estimates range that from 70% to 90% of Superfund dollars are spend on legal and administrative fees - not on cleanup - and that is just the government's expense. Recycling - which is recognized by all as one of the major tools in the fight for a cleaner and better environment has been defined -- **BY THE REGULATORS AND NOT BY CONGRESS** - as arranging for disposal and therefore subject to Superfund.

If you asked the average American they would tell you that **RECYCLING IS THE OPPOSITE OF DISPOSAL AND THAT WE SHOULD SUPPORT AND PROMOTE RECYCLING!** If you asked the members of Congress did they vote to define recycling as equivalent to disposal they would say **NO**. Yet the regulators evolved a position which in their minds defines recycling, which is the quintessential opposite of disposal, as disposal. Thus every business like mine that recycles, every institution like Georgia Tech that recycles, every city like Atlanta, every state like Georgia, every boy scout and girl scout troop, every church, synagogue and civic group that recycles is subject to the liability provisions of

Superfund and could be named as PRP (Primary Responsible Party) and be faced with the time distraction and legal expense and ultimately the joint and several cost of a Superfund cleanup - **all for simply recycling**.

A similar pattern is evolving with the American Disabled Act. Again a noble intent that is being morphed into an unrecognizable maze of regulatory refinement. The Family Medical Leave Act is close behind. Regulatory creep is alive and well.

RECOMMENDATION

We must do something to tame the regulatory process and turn it into a tool of Congress rather than a master unto itself. Those of you more intimate with the process understand the subtleties better than I - but some suggestions are as follows:

1. Apply a less stringent standard for challenging regulations than "arbitrary and capricious" variance from legislative intent

2. Limit regulation promulgation to a specific time period - with subsequent changes required to pass through some legislative view
   or
   Require that initial regulations go through some legislative review and/or subsequent revisions go through a similar review process.

3. Require that regulations pass some cost-benefit analysis

4. Apply performance standards - not documentation standards
   and/or
   Establish less stringent documentation standards for small businesses

SUMMARY

The compliance tax hits hardest on the small business owner/operator who does not have the staff or the wherewithal to delegate the job to others. Thus the organization's key asset is forced to allocate significant portions of time to areas other than growing the business.

A major culprit is regulatory creep which never allows the pot to stop simmering and thus never allows the owner/operator to fully refocus his energy and creativity on growing the business.

Finally, we must enact reforms which throttle the powers of the regulatory agencies and force them to develop regulations that truly meet the intent of Congress and do so in an orderly way.

If we do not alter the process, we shall see the small business sector (the largest generator of new jobs) become noncompetitive. Should that happen, our society becomes noncompetitive and we will have failed.

Senator COVERDELL. Thank you, Marty.

Mr. Chairman, why do you not open with any questions that you may have?

Chairman BOND. All right, thank you, Senator Coverdell, and thanks to all of you gentlemen for some very thought-provoking ideas.

I am going to try to press a little bit harder and see how you think we can implement some of these ideas because they get a little bit tricky when we try to put them in practice.

But one of the first things I think is very important in your testimony is the job suppression impact. One of the concerns that we have in this country today is that we are not creating the new jobs, the good jobs. Our economy does not seem to be coming forward with the kind of job opportunities we need to grow, and I think the study indicated that a lot more people would be hired if it were not for costs of regulation. Now this is a difficult point to get across and a lot of our colleagues I think are not willing to believe that.

Do you have any way of making that clear so when we argue the point about the job-killing aspects of regulation we can get it across from the study, Mr. McCutchen?

Mr. MCCUTCHEN. I do not know from the study, other than that over 50 percent of the respondents said that they would have hired additional employees—it is the only thing the study can present to support that.

I think you have to look at a little common sense in looking at the hours that people are spending, which many, many studies have been done. We know how many hours people are spending on regulatory activity—and look at results rather than process, as many of the panelists have discussed.

I think no one is against clean water and clean air. However, what we are doing is one-size-fits-all regulation—punishing the innocent along with the guilty—whereas there may be 80 percent of the population that has a flawless record and we are forcing them to foot the same compliance costs as the polluters and the unsafe employees. Any way of minimizing that time, it just stands to common sense that the small business owner would have more time to devote to the business, the business would then grow and they could hire those new employees.

Chairman BOND. To be the devil's advocate, there are some in Washington who would say that all those regulatory compliance requirements really force businesses to hire more people to comply with regulations.

[Laughter.]

Chairman BOND. I am afraid that element is there.

I am going to ask the others to comment on the job-suppression impact, but you mentioned one thing that is very important to me, because I think there has been a lot of confusion and a lot of downright misinformation that somehow this is an effort to roll back the standards for clean water, clean air, and a healthy environment. We are totally committed not only to maintaining the progress that we have made, but to continue that progress.

What specific suggestions would you have for us that would enable us to focus our efforts on dealing with the problems and making sure that the regulatory focus is turned on those who are pol-

luting water and air? Do you have any suggestions for us on how that can work?

Mr. MCCUTCHEN. I think you may need to have a press campaign in the media to make sure to make it very clear that you are not anti-environment.

Chairman BOND. I think we have already lost that one once and we are going to start over again and say excuse us, you did not hear us the first time. But that is a problem.

Mr. MCCUTCHEN. Part of the problem with the budget taking away some of the enforcement, there again that enforces the fact that perhaps they are not serious about going after the gross polluters. The first battle to win is to say yes, we are serious about going after those, but we also want to protect the innocent and to provide some way of distinguishing between the two.

First, you have to get credibility with the environmentalists that you are serious about the gross pollution, such as the city of Atlanta dumping raw sewage into the Chattahoochee River. I do not know where all the environmentalists are protesting that when that has been going on for many years, and that is a perfect example of a fairly obvious situation where there is a problem, and with all of our huge regulatory burden, it is still happening. If we could focus some of this tremendous time and energy that we are spending on regulations overall, and focus on cleaning up situations like the Chattahoochee, think of what more we could accomplish.

Chairman BOND. You may have noticed I smiled when you commented on the environmental appropriations. Among my other hats, I happen to be Chairman of the Veterans, Housing and Environment Appropriations Subcommittee. We were able to restore most of the funding for EPA enforcement, and noted that the National Academy of Public Administrators has suggested very strongly that the EPA can turn over more of the enforcement powers to well-functioning States and State regulators, who are doing a good job. If somebody is not doing a good job, then the EPA can move in. The EPA must set the national standards so you do not have one State polluting another State because of lax standards. But NAPA has said very clearly that more of this enforcement can more appropriately be done at the State level. I guess there was a 4 percent cut in the enforcement budget and somehow you would not get that from following the mainstream press.

Dr. Gay, you indicated—I thought you looked like you might have an answer to a couple of these questions. Let me turn to you.

Dr. GAY. Well, on the latter question, I think that the debate could be turned back to the naysayers in the sense that if you were truly requiring people to conduct cost-benefit analysis and do risk assessment, you could reframe the question from do you like a clean environment, to are you willing to spend to clean up this dirt so that you could eat it; or regarding a risk assessment example how much are you willing to spend to save a life. For example, are we talking about $300 billion to save one life or are we talking about an expenditure of $100,000. So I think if the public was presented the questions in those terms, they might be able to make better choices and decisions.

Chairman BOND. Mr. Fridlin.

Mr. FRIDLIN. There are a couple of things on the environmental aspect, I think this whole idea of self-audits and that type of thing, both on the Federal level and the State level—many companies go in and do self-audits and try to figure out how they can improve their situation as far as emissions and that type of thing. The problem is if they do that, they find a problem and they try to correct it, then they are liable. So they are trying to clean up their own act and the Government comes in and says hey, you know, you have got problems. So I think we need to try to deal with that. A lot of this just does not meet the common sense approach to the situation.

Here in the city of Atlanta, we have had a lot of problems with non-attainment area situations. I think they have found that many—much of the scientific data that they have collected in the past has actually proven to be wrong and they are now reassessing things.

I think if you want to convince some of the other Senators up in Washington, we need to bring them some real-life small business owners who have experienced the problems with trying to meet clean air standards. There are very small emissions, yet they are being told that they can only paint 4 hours a day rather than 8 hours a day, or rather than two or three shifts, and that type of thing. So they cannot fulfill their orders—we have got one specific example that we worked with the State Environmental Protection Division for quite some time to try to get some relief there, and finally did get some relief, but it took a lot of time and a lot of frustration. There was a point at one time where they were going to probably have to lay off people because they were only able to work 4 hours a day.

So those kinds of situations I think need to be told, and the more real-life situations we can present to the U.S. Senate and Congress, I think the better off we are.

Chairman BOND. That is certainly true. That is one of the reasons we are holding this hearing. If you could give us perhaps a summary for the record? Either we could keep it confidential, if they wished the name of the company kept confidential, or if they are willing to have their name in the record, just give us a report setting out what happened to the company and what the resolution was, what the problems were.

[In further response, Mr. Fridlin submitted the following:]

The company is located in Atlanta and manufactures lighting fixtures and poles for outdoor lighting. The paint used on the fixtures must be very durable and able to endure the weather for a long period. The company has attempted to find paint that is low in volatile organic compounds (VOCs) so that air quality requirements for VOC emissions could be met. Numerous efforts were made to find paint that was low in VOCs, but durable in weather. These efforts failed. The Georgia EPD worked with the company to develop a time frame when painting could be done. The company was forced to paint for only 4 hours per day even though the painting was done inside with an air filtration system. Production began to suffer and orders could not be filled on time.

After many months, EPD finally agreed to allow the company tc paint at full production with the agreement that the company would continue to attempt to find paint with low VOCs. EPD indicated that there was evidence that painting operations in light manufacturing were not contributing significantly to emission problems in the Atlanta area and that scientific methods of collecting data on air quality used by EPA and EPD were being reviewed. The company resumed its normal schedules and the problem was resolved for now.

Chairman BOND. Those kinds of things can be a great help as we move from the specific to the general points that we have to make in improving either the legislative framework or the regulatory implementation of that legislative framework.

Mr. FRIDLIN. I think one of the examples of the resolution of this specific problem was, as we were dealing with the State Environmental Protection Division, who has had authority from EPA, golly, I guess since the 1970s, to basically enforce the environmental rules in the State, and has actually had many, many States come to Georgia to see our one-stop permitting program and to see how well we work. EPD here has always worked very closely with the business community, they try not to go out and fine you. They try to tell you this is what you are doing wrong, please clean it up. If you do not clean it up, then you are going to get in trouble. That is how they deal with it pretty much, and it works.

So your comment about EPA giving more authority to the States I think is a very legitimate thing because the people here in Georgia are closer to the situation and can deal with it.

Chairman BOND. Mr. Kogon.

Mr. KOGON. Yes, sir, to answer the first part of your question of how do you convince your colleagues as to the premise that with fewer regulations, there would be more jobs created, I think we have quite a few models that apply to that. The No. 1 premise is that any time you divert the energy of a company away from servicing its customers, you have a loss. The automobile industry, what has happened to IBM where I happened to have once been an employee—any time people take their focus off of customers, you have a diminution. The whole automobile industry today has allowed the Japanese car makers, as an example, to come in and take market share because they were willing to listen to customers.

To the extent that any company or any enterprise or any government does not listen to their constituents, to their customers or to the electorate, they get out of touch, and when you get out of touch, you lose. I think that example just abounds through our society and I think that is the best example. There is not a single Congressman or Senator that does not have businesses in their State that have folded and people that are out of business because the employers failed to pay attention to their customers.

Second, I think there is a recommendation for things that can be done beyond, as you said, turning things back over to States, which I think is a good move and a paradigm shift that allows you to maintain quality and improve efficiency so you can in fact do both—cut costs and improve quality. As again you have seen throughout—most of major industry has downsized, right-sized, whatever word you want to use, but they have come out of it providing better service to the customers and in fact the economy is growing as a result of that. The Government has to go through its own version of that same process.

But more specifically, if you go to performance-based evaluations when in fact you have inspections, as opposed to the artificial, do you have the right training program or do you have everybody signed up to go, have they all gone through the class and you get three giggies because this person did not get a course for 3 weeks

after he was employed? That kind of minutia which does not deal with the overall performance is an area where I think that the——

Chairman BOND. What area specifically are you talking about?

Mr. KOGON. Oh, you can talk about anything in OSHA. If you have a new employee that comes in, you have to go through a right-to-know education process. If in fact that employee goes through the education process and knows what is going on, that is fine; but if you get evaluated and you do not have a piece of paper in his jacket that says he has been through the class, how can you prove it? If you cannot prove it, it's Napoleon law, you are guilty until proven innocent. It does not matter what your workmen's comp mod might be or what your experience would be; if in fact you cannot prove the minutia of the various legislation and regulation items, you are guilty.

Chairman BOND. We found in many other hearings that many of the small business problems faced today can be boiled down to 10 letters—IRS, EPA, OSHA. It is amazing how they keep coming back.

Senator Coverdell.

Senator COVERDELL. Well, in deference to time, I will not pursue all that many questions.

I would like to ask Dr. Gay and the others to respond if you have a thought—in your work, has anyone established a level of investment in regulatory maintenance of the country's standards that would be fair? Let me explain what I mean.

If you ask Americans what they think is a fair investment in their Government for the services they receive, they will say 25 percent. It does not matter what strata. They feel that a wealthy person should pay 25 percent, they feel a middle-class person, or poor, they always say 25 percent. Most of them do not realize that for the average family in our State, the Government is consuming 40 to 50 percent now.

So if you take their own standard of what is fair, the burden is 15 percent more than it should be, and therefore, we have established a goal of pressure that should be relieved. That is about $5,000 per family. Now they are paying 20 percent of their income, if they are that average family, for regulatory reform, $6,000.

Have you ever seen a standard as to what would be fair for an industrialized Nation like the United States to be investing in regulating its Nation so that it has clean air, clean water and a fair workplace?

Dr. GAY. Well, Senator, no, I am not aware of any study that has sought to develop a standard, but if you believe in cost-benefit analysis, the bottom line is—are whether the costs that are imposed on society worth the benefits that are generated. If the answer is yes or no determines whether or not the regulation can be justified.

Senator COVERDELL. Any other comment on that? Yes, Marty.

Mr. KOGON. There is—a lot of the alphabet soup that you just referred to, Senator, there are a lot of the regulations, a lot of the issues, that are just downright good. You know, when you start talking about some of the worker safety issues, when you relate to the economics of accidents that you wind up paying in either workmen's comp premiums or in loss of a trained employee or loss of

productivity, et cetera—a lot of the regulations make sense. The goals in many of these things are right on. As a business, there are many economic benefits to having a safe workplace. Many of these things in fact have their own economic justification in and of themselves, so that to say that all regulation is bad is foolish, and to say that all cost of compliance is negative is also wrong, because we all invest in our businesses to accomplish a variety of goals.

Again, I think cost-benefit is a good analysis and common sense is a good analysis that does work. We cannot go overboard and describe all regulation as evil to business. If we make that approach, then we wind up getting killed in the media and in the public opinion because that is certainly not the role or the position that we are trying to take. But a cost-benefit, a good common-sense evaluation of it is in fact part of the answer.

Chairman BOND. I think that is a very good, very helpful point, Mr. Kogon, thank you for making that clear.

Mr. Fridlin.

Mr. FRIDLIN. Let me just make one comment. I think that back when we started regulating hazardous waste, it was 1,000 kilograms, then it went down to 100 kilograms, now it is down to in many cases one kilogram. I think there have been some proposals to make sure that anybody who has bleach underneath their sink in the kitchen in their house, that would be hazardous waste and they would have to dispose of it in a proper manner. That has not been done yet, because I think they know that if that were done, then they would have some problems because every household in the United States would have hazardous waste that they would have to dispose of in the proper manner.

So I think the one reason we do not have a lot of concern about this through the families and such is because they are not really directly affected by it. The employer tends to be affected by it, the employees do not pay too much attention to that—in some cases they do, it depends if it is an OSHA situation or whatever. But I think what has happened is these regulations start out at large quantities and get down to small quantities and if they ever got to that point, then you would probably say—somebody would say well let us set a standard.

Senator COVERDELL. I want to thank each of the panelists for the testimony, written and verbal, and the contribution you have made. All additional information will be submitted for the record and I hope that we might be able to get back to you with other questions as we work toward the goals you have outlined. We thank each of you for participating today.

I am going to call on the next panel to begin to come forward. Mr. Mike Sullivan, who is president of Southeast Sealing, Inc.; Mr. Bryan Tate, president and CEO of Digitel Corporation and Mr. Alec Poitevint, president of Southeastern Minerals. We had one panelist who had an emergency in his business and could not be available this morning.

As we did with the previous panel, I am going to begin in the order in which I made the introduction. So we will begin with Mr. Mike Sullivan of Southeast Sealing, Inc.

STATEMENT OF MIKE SULLIVAN, PRESIDENT, SOUTHEAST SEALING, INC., CONYERS, GEORGIA

Mr. SULLIVAN. Thank you, Senator Coverdell.

Senator Bond and Senator Coverdell, thank you very much for giving me this opportunity to testify before you today. Southeast Sealing is a small family owned business that was started in Atlanta, Georgia, in 1972. The company was started as a part-time business, and the work we did at that time consisted of the cleaning and sealing of interior concrete floors in warehouses in metro-Atlanta. Over the next few years, as the quality of our work became known, the company grew and became a full-time business opportunity. Southeast Sealing was literally started with a shoestring and a nickel in my pocket. Today, we are one of the largest floor coating contractors in the United States. We install urethanes, epoxies, chemical hardeners and many types of concrete seals. Our capital investment in equipment, vehicles, and building is approximately $1 million. We work on more than 16 million square feet of concrete floors per year and have worked in 38 States, Guantanamo Bay, Cuba, the Republic of Panama and in January of this year, Johannesburg, South Africa. We have 30 employees with a benefit package that includes health insurance, vacation time and a 100 percent company-funded profit sharing program.

Today, you are going to hear Mike Sullivan make some statements in public that need to be said. The first statement I would like to make is, "The Federal Government of the United States of America has become the No. 1 enemy of small business."

For the past several years, rules and regulations have come from Washington at an alarming rate. The fact that Southeast Sealing is still in business is somewhat of a minor miracle. In the next few minutes I will share with you some of the horror stories that I am having to contend with on a daily basis.

Hazardous waste, which has been already mentioned today. From the time the words hazardous waste were first introduced to our industry, we have done everything possible to remain in compliance with the various laws. We have been a generator of hazardous waste, and as such have an EPA Hazardous Waste Generator Number. In November 1993, we were subject to an EPA inspection. In a review of our files concerning the proper disposal and transportation of hazardous waste, the inspector found in the 1990 file a hazardous waste manifest that was not an original. The EPA regulations state we must retain the original manifest. Although it was an exact photocopy of the original, we were not in compliance. The seriousness of this violation was explained to me. Holding the copy of the original in my hand, I tried to explain to the inspector we obviously had the original at one time because we had made a copy of it. My explanation was not good enough, and I was cited for violation number 40 CFR section 262.40(a). Well aware of the potential fine involved, our office staff spent—this is three women—the next 2 days searching every file in the building and found the original misfiled in a 1989 folder. It would be difficult to put a total figure on the cost of this experience to our company. To say that we spent two or three traumatic days would be putting it mildly at best.

The Department of Labor (1) Pension and Welfare Benefits Administration; (2) Occupational Safety and Health Administration and (3) Employment Standards Division.

The above three agencies are in a race, and that race is to see which one can eliminate the most small businesses in the United States.

Profit-sharing. Fourteen years ago, we started a very simple profit-sharing program for our employees. This program was 100 percent funded by the company with 10-year full vesting. In the following 14 years since that plan was started, there have been ten major revisions of that program that have drastically impacted our company. Three years ago our small, less than one million dollar fund was the subject of an IRS audit. It took 2 days for the agent to review our records and upon completion found absolutely nothing wrong. However, we had to pay our plan administrator $1,200 for the time he was involved in that audit.

OSHA first aid training. Not to be outdone by the bureaucrats at the Pension and Welfare Benefits Administration, OSHA has initiated regulation 1926.50 which requires in the construction industry that at least one person on every job site to be trained and available to administer first aid and CPR. What that means to our small, family owned business is that when a part-time employee on a Saturday afternoon goes to an Industrial Park to wash a concrete floor in an empty building, for which we receive $400, he needs to be certified to administer first aid and CPR. This little known regulation by OSHA in the past few years has cost our company over $5,000.

Davis-Bacon Act. During the 1980s, our company was the low bidder on hundreds of thousands of square feet of concrete coatings to be applied to Air Force bases, naval facilities and Army posts throughout the United States. We were forced to pay our employees exorbitantly high hourly wages because of the Davis-Bacon Act. As the low bidder on these projects, my best calculation is that we saved the Federal Government and the taxpayers of these United States in excess of one half million dollars. That was the difference between my bid and the second bidder. We no longer participate in government contracts. We will not bid on any government project that requires our company to be regulated by Davis-Bacon. I know of several other quality subcontractors who also will not work on a Federal project where Davis-Bacon is a factor. Therefore, the loss to the Federal Government throughout the United States on construction projects, just for the simple fact that good companies refuse to participate, has to be several hundred million dollars a year. This figure is in addition to the $1 billion (per year) figure that we know Davis-Bacon adds to construction projects.

I would like to give you one example of how ridiculous the Davis-Bacon Act is. Several years ago, we were working at Holloman Air Force Base in New Mexico. We hired a rising high school senior to work for 1 week as a laborer. His paycheck for that week was $684. His buddies who were working at McDonald's at the same time made approximately $600 a month.

In closing, I would like to hold up to you the Yellow Pages of the Atlanta phone book. When I started in business, I had one competitor. Today, I have more than 14. How many of these 14 companies

have profit-sharing programs, insurance for their employees and vacation time? How many understand the EPA regulations regarding hazardous waste and how many understand the OSHA regulations? Probably none. Yet, because we are a leader in our industry, we have become the target for the Federal Government.

Thank you.

[An attachment to the statement of Mr. Sullivan follows:]

Brenda Reneau
COMMISSIONER

Frank Keating
GOVERNOR

Oklahoma Department of Labor

Investigative Report: The Davis Bacon Act and Fraudulent Wage Data Submitted to the U.S. Department of Labor

Executive Summary

Background:

On November 4, 1994, the U.S. Department of Labor issued new general wage decisions for heavy construction in Oklahoma County and other counties comprising the Oklahoma City metropolitan area. Many of the wages prescribed by these new decisions were significantly increased from the most recent modified versions of the heavy construction wage decisions. It had been several years since the previous survey, so a reasonable increase in rates was expected. In some cases, however, the increase was outrageous, which prompted a public outcry from the building industry and from a wide variety of government subdivisions that pay for the construction work with taxpayer dollars.

Some of these affected parties approached the Oklahoma Department of Labor with allegations that fraudulent data had been submitted to the U.S. Department of Labor during the survey process. Because Oklahoma's Little-Davis Bacon Act forces Oklahomans to adhere strictly to the federal wage decisions generated by the U.S. Department of Labor and, due to the fact that the Oklahoma Department of Labor is responsible for strictly enforcing that law, Oklahoma Labor Commissioner Brenda Reneau commenced a preliminary investigation to determine whether Oklahoma's workers and taxpayers had been the victims of fraud and abuse.

This investigation focused on three specific cases of possible fraud. In each case, the Oklahoma Department of Labor obtained initial documentation from affected parties. Appropriate government subdivisions were contacted to help establish the credibility of the initial documentation. Other potentially affected or involved parties were contacted, including contractors and others from the private sector, and all licensing, financial and anecdotal evidence was pursued. It should be

noted that this exhaustive investigation attempted to eliminate all plausible explanations, with fraud being the absolute last resort.

Findings:

Case 1: Oklahoma City Sanitary Sewer

Matthews Trenching Company, an open shop contractor, completed a $587,000 sewer project in Oklahoma City in the fall of 1992. Matthews' certified payroll indicates that during "peak" activity, six common laborers, four pipe layers and three operators — 13 total employees in three work categories — were employed on the project. A U.S. Department of Labor wage survey for the same project was submitted by an as yet unidentified "interested party" which lists 28 "peak" employees, with the "extra" 15 being classified as various categories of "operating engineers." None of these employees — who are listed as receiving substantially higher wages and benefits — were actually employed on the project. Thus, the wage survey for an actual project submitted to the USDOL by an "interested party" lists 15 fictitious employees.

Case 2: Underground Storage Tank

Unlike the first case, the underground storage tank was never constructed. Case 2 involves fictitious workers on a fictitious project. A wage survey submitted to the U.S. Department of Labor claimed work for 20 plumbers and pipefitters on a $2 million underground storage tank in Mustang, Oklahoma. This survey indicated that each worker received compensation of $21.05 per hour — a wage of $17.00 per hour and fringe benefits of $4.05 per hour worked. The investigation found that the Mustang underground storage tank was never built — no project was found that matched the description provided by the U.S. Department of Labor. As a result, the wage survey on which the USDOL wage decision was based contains false, and we believe, fraudulent data.

Case 3: Oklahoma City Treatment Plant

The third case involves two wage surveys: one for a project constructed by a different contractor than claimed, and another that was never constructed at all. The USDOL received two wage surveys identifying the Concho Company as a subcontractor on projects at the Lake Hefner Treatment Plant. Each survey identified 16 operating engineer categories for 33 total "peak" employees. While Concho had performed some excavation and related work at a project adjacent to the treatment plant, another unrelated contractor, Flintco, Inc., actually performed the "high lift" job identified in one of the surveys. Interestingly, however, Flintco didn't even sign the contract to initiate the project until several weeks after the federal wage form had been date stamped in at the U.S. Department of Labor.

The project identified in the other survey — and falsely attributed to Concho — has never been built. Further, the surveys claimed that each job was performed pursuant to a collective bargaining agreement. Concho, to whom the projects were falsely attributed has a collective bargaining agreement with an operating engineer local union hall. Flintco, the company that actually performed the work, does not have a collective bargaining agreement with any of the operating engineer local union halls.

Conclusion:

It should be noted that the Oklahoma Department of Labor was provided with leads on several dozen possible cases of fraud. The three cases we investigated were selected at random. Since all three of these cases contain elements of fraud, we have no choice but to question the breadth and depth of what may be a significantly larger systemic problem.

In each of these three instances, the Oklahoma Department of Labor believes that the false information was submitted to the U.S. Department of Labor with the intent to influence the outcome of the related U.S. Department of Labor wage decisions. Because Oklahoma law mandates that the U.S. Department of Labor decisions must apply to state construction, Oklahoma taxpayers are footing the bill for this fraud.

It is our intent to present our findings to the appropriate investigative and prosecutorial authorities to help bring to justice those who knowingly have attempted to defraud the taxpayers of Oklahoma and the United States. In cases where Oklahoma law may have been broken, this report will be presented to the district attorney in each county where a fraudulent act may have occurred.

The response of the U.S. Department of Labor to date has been disappointing. Repeated requests for information solely in the possession of the Department have been delayed or denied. Absent prompt and full cooperation in our effort to expose and prevent criminal activity, the USDOL will be engaging in conduct bordering on complicity in the illegal conduct.

In all likelihood, the perpetrators of this fraud are unscrupulous "interested parties" who reap the benefits of an inaccurate survey. The evidence contained in this report provides a compelling case that the Davis-Bacon Act and its wage survey invites the submission of fraudulent information and protects those unscrupulous "interested parties" who participate in the process.

Phantom Workers

BRENDA Reneau was elected as labor commissioner of Oklahoma last November after a campaign in which she accused the Democratic incumbent of being up to his neck in labor-union abuses that cost taxpayers hundreds of millions of dollars. At issue was the Davis–Bacon Act, under which the U.S. Department of Labor sets "prevailing" wage rates that must be paid by contractors working on federal projects; Oklahoma's version of the law applies the federal standards to state projects. But since Commissioner Reneau took office, she has found abuses far greater than she had suspected. The Labor Department had repeatedly accepted bogus submissions from labor unions in establishing "prevailing" wages. One example: a paving job in the parking lot of the Internal Revenue Service building in Oklahoma City, which supposedly involved 29 employees using seven asphalt laydown machines and seven rollers. Commissioner Reneau's chief of staff, Jim Marshall, said: "You'd have trouble fitting all that equipment in a workspace that size. It's only a 30-car parking lot. Besides, it's paved with concrete, not asphalt."

The Labor Department's reaction has been to stonewall the state investigators, denying and delaying requests for information. Labor-union submissions obtained after the state filed Freedom of Information Act requests had the union officials' signatures blacked out—apparently to block state prosecutions. But abuses are inevitable because the law itself is absurd. Prevailing wages are as chimerical as prevailing prices for houses or automobiles. In the real world of competitive contracting, wages vary according to differences in skills, fringe benefits, and bargaining power. The groups that suffer most—besides taxpayers—are small contractors and less skilled workers, who tend to be disproportionately minorities.

Brenda Reneau's exposure of union abuses in Oklahoma should galvanize Congress to repeal the Davis–Bacon act. President Clinton might veto repeal (Vice President Gore told the AFL-CIO executive council in February that it could "count on a presidential veto"). Fair enough. That would show clearly who stands with big labor, and who stands with taxpayers and minorities. Mr. President, make our day.

Senator COVERDELL. Thank you, Mr. Sullivan, we appreciate the testimony and of course we will enter it into the record.

Mr. Tate, I am going to ask you if you would present your testimony.

STATEMENT OF BRYAN TATE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, DIGITEL CORPORATION, ATLANTA, GEORGIA

Mr. TATE. Thank you, Senator Coverdell and thank you, Senator Bond, for coming to Georgia and listening to some of these small business issues.

My name is Bryan Tate and I am the president and CEO of Digitel Corporation. We are a privately held, Georgia-based corporation headquartered here in Atlanta. Our company provides—we actually sell business telephone systems and data communication products and our primary target market is small- to medium-sized businesses. We have approximately 41 employees in Georgia and another 71 employees scattered over 10 other States in the country.

I have been asked to testify today on the impact of Federal regulation on small business. More specifically, the Americans with Disabilities Act. When you think of government regulation, usually the first thing that comes to mind is taxes. I think, however, as high as the taxes are, one can still plan for them in the business. The biggest risk that I see to small business is regulatory lawsuits.

We have had two exposures to the Americans with Disabilities Act. The first came in June 1993, when we hired a young lady to answer our telephones, to be a receptionist. She worked for us 1 week and then we found out that on the weekend after she had completed 1 week, she was in a car accident. It was non-company related, had nothing to do with her employment. She did not show up for work on the following Monday and we asked where she was and we learned that she had been in a car accident and had possibly sustained some injuries.

The telephones have to be answered, so we had to hire a temporary to come in, at a substantial premium on rate per hour. So we waited, I believe, for a couple of weeks to find out if she was going to get better and be able to come back and then it became clear that she was not—did not feel like she was going to come back to work for us. Then we found out that there was a lawsuit involved and perhaps if she came back to work that would lessen the claim in the lawsuit. So my natural inclination was to say let us replace her and get someone else.

Our attorneys at that time advised us that we cannot do that because she would be covered under the Americans with Disabilities Act. I could not believe it. I said she only worked for us 1 week, it did not have anything to do with us. They said well that is the way it is.

So we began a long period of discussion where we tried to find out will she be able to come back, is she ever going to be well enough to come back, and we had a hard time getting any information. Finally, the attorneys said we should ask her to visit one of our workers' comp doctors. They challenged the credentials of our workers' comp doctors, and this is a—our workers' comp carrier is a national carrier. So finally, after we had given them a selection

of doctors to go to and 10 minutes before the actual doctor's appointment, her husband called to say that she would be resigning. This was like 2½ months after we hired her.

During that whole period of time, we had to have a temporary employee and pay a lot of legal bills for something that was totally unknown to me, that was my first exposure.

Our second exposure was when we expanded our building. I started the business in 1983 and we had always leased our office space. Then in 1990, we found a building and some land that we could buy that was on a major thoroughfare, and it would provide a lot of additional growth for us, we were growing pretty rapidly at that time. So we bought the building in 1990 and by 1994, we had run out of office space, so we decided to expand the office into the warehouse. We hired an architect, we got a general contractor, there were blueprints. We went down to Decatur and got building permits and the whole thing was done the way it was supposed to be done.

It took about 2½ months to do the completion of the building. It was a lot of money, a heck of a lot of money for a small business like us. We got to the end of it and the last thing was the Certificate of Occupancy (CO). The fire marshal came out and would not give us a CO. He said our building did not comply to ADA requirements. I asked him why and he said well you do not have an elevator to get to the second floor. Now this building was built in 1979, it always had a second floor, parking lot, standard office-warehouse type building. He said when you get a building permit, it opens up all the building for ADA requirements.

There were not written requirements that I could find. They did not tell us this until after we had already spent the money and gone through the whole process, and we barely were able to get a Certificate of Occupancy. We had to go back through the whole building and renovate the doors, we had to—we provided handicapped access, we striped the parking lot, we put up signs. The whole issue was though if I had known that, I would not have expanded the building. In retrospect, it was not worth it.

So I would say in conclusion, I think that the original intent of the Americans with Disabilities Act is good and honorable. I think that it lacks definition and it is ambiguous and it is hard for a business person to understand what we have to do to prepare ourselves for this kind of regulation.

You know, it is hard enough making payroll every 2 weeks, let alone trying to plan for what is going to come out of the woodwork that you are not expecting.

So my recommendation would be to take a look at this regulation, and while it has worthy intent, put some specifics in it so that business owners can figure out what to do, so that we can be in compliance with that issue.

Thank you very much.

[The prepared statement of Mr. Tate follows:]

Prepared Statement of Bryan Tate, President and Chief Executive Officer
Digitel Corporation
before the Committee on Small Business
February 14, 1996

My name is Bryan Tate, and I am the President and CEO of Digitel Corporation, a Georgia Corporation based here in Atlanta, which I founded in 1983 as a pre-divestiture telecommunications company. Digitel provides telephone and data communication products and services to small- and medium-sized businesses in Atlanta and a number of other cities throughout the United States. We have a total of 41 employees based in Georgia, and an additional 71 employees scattered over ten other states.

I have been asked today to testify on the Federal requirements and their impact on small business. More specifically, I am reporting on the real impact of the relatively new Americans for Disabilities Act, and how it relates to small business.

I have two examples of how the ADA regulations have impacted our company:

1. In 1989, our company was occupying approximately 3,000 square feet in northeast suburban Atlanta. We had outgrown the space that we were in and were looking for a larger space to occupy. We had always leased the space that we were in, and thought that if we could find a place to purchase we would be able to lock in future costs and create a more stable long-term environment for our company. In early 1990, we purchased a building in Doraville that had approximately 1.7 acres of land and 12,500 square feet of office/warehouse space. We purchased the building and land through a small business administration loan guarantee, and within three years converted the loan to a regular business mortgage. By 1994, we had outgrown the space and were continuing to expand our business and employee base in Georgia. We concluded that the best alternative was to expand the office space in our building by building additional offices in some of our excess warehouse space. We secured the services of a registered architect to do the design and blueprints, and the services of a general contractor to perform the construction. The blueprints were approved by the local county officials, and a building permit was secured.

   We began the construction in July of 1994, and the expansion was completed in approximately September of the same year. When the Fire Marshall came out to perform his final inspection required for the Certificate of Occupancy, I was advised that we could not receive our Certificate of Occupancy because we did not have an elevator or ramp built for wheelchair access to the second floor. I advised the Fire Marshall that the original building was built in the late 1970s and had always contained a second floor. I also informed him that the original blueprint for the new construction had been approved in advance by Dekalb County. He advised me that according to the new ADA guidelines, that a building permit for an expansion to an existing building also included any retrofits required for the preexisting building. This was not explained to me prior to beginning the construction and incurring the

additional cost to build the expansion. Then it was only to be told that I could not use the new office space because the entire building was not compliant with current ADA requirements. I contacted a friend of mine in the State government and asked for advice on how to deal with the situation. I was advised that the State Fire Marshall was not someone who could be bypassed, and my best advice would be to go to him and beg for mercy, which I did promptly. Only after agreeing to retrofit the building for handicap access and agreeing not to put additional employees in the new area, was I granted a Certificate of Occupancy. Had I known ahead of time that I was spending all of the money to expand our building, without the certainty of receiving the ability to use that investment, I would clearly not have expanded our building.

2. In June of 1993, we found ourselves in the need of a new receptionist. We ran an ad in the local newspaper and interviewed a number of candidates for this position, and ultimately hired a young lady as a receptionist with entry level skills. She started work on a Monday and worked for one week, and the weekend following her first full week with our company, she was involved in an automobile accident. The automobile accident was entirely personal and non-company related. However, she did receive some alleged neck and back injuries and could not report to work the following week. We waited several days to learn if her injuries were such to allow her to return to work to answer the telephone. We did not receive a direct answer to these questions. Later we learned that there was a potential lawsuit regarding the automobile accident, and that returning to work too soon may compromise any potential claims that may exist from the injuries. I suggested to our Human Resource Manager that we simply terminate here and hire a new receptionist. We were advised by our attorneys that the lady who only worked for us for one week was protected by the Americans for Disabilities Act, and if we terminated her we would risk serious liability for violation of this new Act. We then proceeded to have to incur additional expense by hiring a temporary employee through a temporary agency at a premium price to fill this spot until we managed to work through what was ultimately going to be the final disposition for her case. To make a long story short, we were involved in over two and a half months of discussions with her, her husband, and their attorney regarding her willingness to visit one of our worker's compensation doctors. She even challenged the competency of our national carrier's worker's compensation doctors, and we had to offer her a selection of doctors. Finally, ten minutes before the day she was supposed to show up for an appointment with our worker's compensation doctor, her husband called to say that she would be resigning her position with our company. So for the fact that we had hired a young lady to be a receptionist, who worked for us for one week, and then because of an automobile accident which was no fault of the company's and potential financial gain, we had to endure over three months of legal and medical expense in order to replace this reception position. While I realize that the ADA was designed to protect the rights of legitimately disabled persons, the uncertain and ambiguous interpretation of this Act renders the small business extremely vulnerable to unnecessary and costly litigation.

Thank you very much!

Senator COVERDELL. Thank you, Mr. Tate, I appreciate the testimony.

Mr. Poitevint, Southeastern Minerals.

STATEMENT OF ALEC POITEVINT, CHAIRMAN AND PRESIDENT, SOUTHEASTERN MINERALS, INC., BAINBRIDGE, GEORGIA ON BEHALF OF THE AMERICAN FEED INDUSTRY ASSOCIATION, ARLINGTON, VIRGINIA

Mr. POITEVINT. Thank you, Senator Coverdell and Senator Bond, it is a pleasure to be with you, and Senator Bond, it is great to have you in Georgia.

First of all, I have submitted a rather detailed statement that was prepared in part by the American Feed Industry Association, of which I am immediate past chairman. I have chaired two different national associations of small businesses, all in the agriculture field—one, the National Feed Ingredients Association in Des Moines, Iowa, and most recently American Feed Industry Association in Washington, D.C. Some of my comments will be related to our feed industry, but they are applicable, I think, to all businesses—in particular small businesses.

Also, Senator Coverdell, it was 1 year ago today that I was in Washington testifying before the Agriculture Committee on this same area of regulatory reform, with others. The good news is that we are still testifying, the bad news is 1 year later, I am not aware of a single form or single piece of paper that has been done away with despite the good efforts of you and Senator Bond and others that are involved in this process.

I am very pleased that the Commerce Department continues to have a lot of scrutiny, but we seem to be somewhat bogged down—I look forward to us moving all this legislation over to the White House where I am sure the President intends to sign everything and deregulate our Government.

So from that standpoint, in summary, let me say first of all that we as small business people, in our animal agriculture industry, we are about 75 percent small business, nearly all of them family owned, and we deal with all the alphabet you named, including the Food and Drug Administration.

Immediately after the election in November, the Food and Drug Administration—I participated in a food and drug law hearing, sort of their legal way to communicate in Washington, and it was very obvious that they had gotten the message of the election and wanted to move toward working, treating us as customers. I am sad to report a year later that we are not quite the customer that we were in early November or late November 1994; I hope we will get back there.

Most importantly, I think what everyone has been saying today is that when we are regulated, it must have a positive effect and it must have some degree of value and in fact, it must achieve some real public benefit. I think the cumulative effect of these unfunded mandates, which is still a correct way to describe them, is that they keep piling onto the process, and I think the Congress has acknowledged in both political parties a need for some reform, and I hope we can work toward reform.

I think it is unfortunate that our agencies do not take, as has been presented earlier, the opportunities to work with States. I know for sure that FDA inspectors and, as mentioned earlier, the EPA, that the States are in a position to do this job and do it well and do it for less cost and I think do it on a basis which is more reasonable.

We in particular know in our feed industry that we would like to have more of the responsibility of the FDA assigned back. Also, unfortunately there are zealots in these agencies and what sort of regulation might be imposed by an agency in Georgia is not necessarily the same interpretation as in Missouri. In fact, the Kansas city office of the FDA is notorious for not even following the instructions—reasonable instructions from Washington, D.C. We are covered with things we can do away with.

There is a form called the MSDS form, which is a list of supposedly dangerous substances. If you run a small feed mill in this State, rather than having to have the four or five or six items that you might have in that facility that truly are dangerous, an average firm will have 400 to 500 of these in a drawer. As Mr. Sullivan says, if the inspector comes and he goes through and you've only got 499 of these and you are missing one of them, then you may be missing the one that is unimportant, such as limestone which also requires an MSDS.

Also, we in our industry have been subject to the Toxic Substances Reporting Act. We have to report all kinds of enormous inventories and we were burdened by that because unless you release a certain amount you did not have to comply. We, fortunately, after working with OSHA, but spending some millions of dollars, got them to recognize that most companies release 500 pounds or less per year and to exempt our industry. But we cost ourselves millions of dollars in terms of effort to achieve this status.

It is my understanding from the people in our company that have to fill out this form, that those agencies are over a year behind even putting the information in the computer and reviewing the forms. So we are sending data that is 14 to 15 months old when it gets reviewed.

In particular, the Commerce Department. I have been gone from home since a week ago Monday, but fortunately for me, Monday morning, the Commerce Department had sent to me the Bureau of Census annual forms for small manufacturing firms, and they claim that the statistical dealers only draw a few and I have three on my desk. If you have never seen this form, it is a nightmare, because they want to know how much electricity you consume, how many employees you have got each quarter. They want to make sure that I report—in regard to my friend Marty Kogon who spoke earlier—how many pounds of scrap metal you sold per year. They send the form back to you if you do not report because they say all manufacturing companies have scrap. This Census form is pages and pages long.

When I first started in this industry 25 years ago, only one of our small businesses was drawn for this form, and it was drawn once every 5 years. Now each of the small businesses that I am involved with have this form drawn for the company every year. For our company, that is like a 25-fold impact, we have five manufac-

turing facilities, they all get drawn every year instead of every 5 years. Certainly the statistical number could be reduced.

From our standpoint—and I heard you clearly ask—I have sort of come up with the Poitevint theory, not to be confused with the congressional theory, as to what we ought to do about this problem. I want to tell you that rather than complaining, I have some actual, for the record, suggestions which I think are reasonable.

First, let us reduce the number of forms at every agency. I would like to see Congress introduce legislation to require reduction. I heard you speak about 10 percent, that is low. I am also aware because I served on a panel one time, we give out bonuses to our Government senior executive level people—I have served on those panels and evaluated. I would like to have that added as a mandatory criteria to the process of those forms. In other words, what have you done in your agency to reduce paperwork for the constituents you are serving.

The second thing is that most of these forms we are now filling out that existed years ago, used to come from our Government stamped "voluntary"—in very small print I might add, you had to read it. But if you took time to read it far enough, it said voluntary. Now it says mandatory. I would like to see how many we can go back—we do have people in America that love to fill out forms and we should not deny them that opportunity by putting voluntary on there.

[Laughter.]

Mr. POITEVINT. Third, if we are going to keep these forms, I would like to see us require that the information on the form be reduced. For example, arbitrarily I think 50 percent is a good rule but 25 percent—in other words, 25 percent of the lines we currently fill out should be reduced.

Then more importantly, we ought to go back and reduce this universe of the sample, so if it is Mike Sullivan's bad year to be drawn, then it is not necessarily my year.

Most importantly, I would like to tell you about a form, for the record, that I am not complying with. Our company, Eastern Minerals in Henderson, North Carolina, that works roughly 30 people, has been chosen by the Department of Commerce, supposedly randomly, to submit on a quarterly basis a P&L for our company. It requires that P&L to be in the same format that you would generally use for general account purposes for that trip to the bank that most of us make to borrow money. In fact, all of those lines are required.

It is required that this particular form be submitted within 30 days of each quarter. We have been in the pool now for almost 2 years. I submitted the first one—I could not believe and have asked the Congress to indicate to me is there any Member of Congress, Republican or Democrat, that ever voted for a regulation that would require a small business to send a profit and loss statement with your confidential financial information to the Department of Commerce on a quarterly basis. Even the IRS only requires this once a year; granted, we send quarterly estimates. But anyway, I have not been able to find anybody in Washington that will admit they voted for this. Our company has elected to not fill out this form, and we are being harassed by the Commerce Department and

we do not have any intention at this time of filling out this form, and we are not in compliance. I think it simply follows others who were honest enough to say sometimes we are not in compliance because we do not know. This is one we are not in compliance because we think it is wrong and it is not defendable.

We need your help, we hope you are successful. I would like for you to send a lot of this stuff to the White House immediately. Maybe we will get it signed, if we do not, then that is what elections are about.

Thank you for allowing me to testify.

[Applause.]

[The prepared statement of Mr. Poitevint follows:]

Prepared Statement of Alec Poitevint, Chairman and President
Southeastern Minerals, Inc.
before the Committee on Small Business
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Chairman Bond, Senator Coverdell, distinguished members of the Committee, my name is Alec Poitevint. I am chairman and president of Southeastern Minerals, Co., Bainbridge, Georgia. I wish to thank the Chairman and the Committee for the opportunity to appear today to discuss the immediate need for federal regulatory reform to ensure the continued competitiveness of American small business generally, and for Georgia small business, in particular.

It was exactly one year ago today I appeared before the Senate Committee on Agriculture in Washington, D.C., in my role as chairman of the board of the American Feed Industry Association (AFIA). At that time I told the Agriculture Committee the greatest impediment to small business competitiveness and job creation in our industry is the archaic, burdensome bureaucracy of the federal government. I repeat that message here today. AFIA in Washington will submit my full statement as part of the formal record of this hearing.

AFIA, as you know, is the national trade association representing the manufacturers of more than 70% of the primary livestock and poultry feed sold annually in the U.S. AFIA's members represent more than 3,000 registered feed facilities in every state, as well as more than 35 state feed organizations, and a dozen foreign feed manufacturing associations.

The feed industry, of which I am proud to be a part, is not a "big company" industry. As the immediate past chairman of AFIA, I am also small business owner. Approximately 75% of the AFIA membership, by federal definition, are small businesses. Most are family-owned.

I applaud this Committee for taking on the challenge of federal regulatory reform as a means of enhancing small business competitiveness and jobs creation. I am here today to give the Committee examples of existing and pending regulations which work against those goals.

As a small business owner, I join my association in our disappointment that regulatory reform legislation has not been approved by the Senate. However, I am gratified this Committee has continued its investigation on the impact of federal regulatory hyperactivity on small business in this country. I appreciate the opportunity to bring the experiences and perspective of an important component of U.S. food production to this discussion.

UNFUNDED MANDATES ON BUSINESS

The examples which will be pointed out today by this hearing's witnesses are just the latest examples of a very old problem. Federal regulation with no clear, established problem to correct, or federal regulations promulgated based upon theoretical risk, have no place in modern government.

Let me state for the record: I do not believe -- nor do most responsible business owners believe -- all regulation is unnecessary, or that business would automatically flourish in a

totally deregulated environment. Reasonable federal regulation is welcomed by the small business as a fail-safe mechanism, a complement to strong industry standards and practices.

My concern, and that of my industry, goes to the increasing number of "unfunded mandates" the federal government passes on to small business, with little apparent regard for the cumulative effect of these rules on competitiveness. These requirements, regulations, fees, etc., are enacted as part of larger pieces of legislation, but there has been little attention paid to the cumulative effect of these additional regulatory and economic burdens.

This layering effect -- restrictions,, more paperwork, fees-for-service -- are strangling business's ability to expand and innovate. The burden falls even more heavily on small business. It is well known that job creation in this country is a miracle of the small business sector; the federal government should be working to facilitate new jobs, not strangle the life out of small business innovation.

All of this zeal to regulate comes with little regard to cost of such regulation when balanced against the projected benefit, nor does it include any analysis of real risk. Too often, these rules are now proposed on the basis of theoretical risk, a basis for rulemaking that has generally been avoided by past Administrations.

At the same time, the Committee must also be aware that any increased intrusion by the federal government into the daily cost of small business operations works against these companies being able to take advantage of export market potentials. Where the federal government has paid lip service to assisting small businesses which wish to enter foreign markets, outdated, unnecessary regulations and paperwork actually work to thwart any government effort.

As immediate past chairman of AFIA, I gave many speeches during my term which restated a single, very clear goal when it comes to the federal regulatory oversight of our industry:

> "**Business regulations must be practical, and they must achieve <u>real</u> public benefit.**"

I believe the fundamental flaw in the current federal regulatory mechanism is that regulations are created in a vacuum, published in the <u>Federal Register</u> as proposals or even proposed final rules, all without input or discussion with affected industries.

I mention input from the regulated industry because the basic need for regulation may be mitigated if a government agency has full understanding of industry practices and operations. I will give examples of the feed industry's innovation in this area, efforts which have yielded more practical regulatory approaches after federal coordination with the industry.

Just as state and municipal governments are negatively affected by increased costs of federally mandated programs, so too is business. Business, unfortunately, is often erroneously assumed to be the "deep pockets," able to fund both federal and state programs for which public revenues are lacking.

The ultimate effect is obvious. The more costs of federal and state programs that are passed on to business, the less ability business has to innovate, expand and create more jobs. The converse is actually true: Business, when faced with uncontrollable costs of regulation, will, at best, hold even; more likely, however, business will retrench, controlling costs through job layoffs, production cuts, etc. In addition to the inevitable retrenchment that results from overregulation and its concomitant additional costs of operation, is the inability of many small businesses to take advantage of potential export markets.

My company -- just like thousands of others -- has been forced to spend time, manpower, and considerable dollars creating internal systems to minimize the impact of federal reporting on our daily operations. We strive to be able to keep up withe avalanche of federal paperwork -- it seems a new form arrives almost daily -- without the need for lawyers, CPAs, or employees dedicated to just the fulfillment of federal reporting requirements.

EXAMPLES OF REGULATION GONE AWRY -- AND HOW THEY CAN BE FIXED

The remainder of this statement will deal with specific programs which AFIA has identified as out-of-control or unnecessary. I will also discuss how my industry, in concert with the agency, has been successful in developing alternatives to regulatory schemes in some cases, and obtaining administrative relief from ongoing programs in others. I will concentrate our evidence within those federal agencies with which we have the most contact, as follows:

- The Food & Drug Administration;
- The Occupational Safety & Health Administration, and
- The Environmental Protection Agency

The Food & Drug Administration

The Food & Drug Administration (FDA) has direct regulatory authority over the feed industry. This authority emanates from the agency's mandate in the federal Food, Drug & Cosmetic Act (FDCA) to regulate "food," which translates as anything fed to man or animal.

FDA oversees all components in mixing feed, including animal drugs, the machinery, process and overall operation of registered feed mills, as well as on-farm mixers using certain types of animal drugs. This oversight takes the form of product approvals, product registrations, official status rulings [Generally Recognized as Safe (GRAS) status], Current Good Manufacturing Practices, and facility inspections.

I'll discuss today two areas where we believe FDA needs restructuring, and two areas where AFIA was successful in heading off ill-advised rulemaking through honest compromise with the agency.

A chronic headache for the feed industry has been FDA inspections, not a surprising statement for a federally regulated industry. However, it is not the fact that our facilities are required to be inspected by the agency with which we have problems, but the fact the agency has 1) employed inconsistent, non-feed industry specific criteria for such inspections, and 2) by

not contracting with the states, FDA wastes manpower and precious federal dollars, while inspection quality and scope have suffered.

Our analysis of inspection problems focuses on two primary areas of regulatory deficiency. First, FDA does not generally recognize animal feed plants as separate and distinct from human food production facilities or human pharmaceutical plants.

Feed mill inspections must be practical for both the agency and the inspected facility. Manufacturing processes in feed mills are not the same as for human food or pharmaceutical facilities, and the criteria must be realistic and unique to each industry regulated and inspected by FDA. For instance, human food processing and pharmaceutical plants are much larger than the average feed mill, and food and pharmaceutical facilities generally must operate under near-sterile conditions. Not so for a feed plant.

The same is true for the basic feed manufacturing processes; they bear no resemblance to food processing or pharmaceutical manufacture, yet overall, FDA inspections look at them in a nearly identical fashion.

Second, complicating the lack of feed-industry specific criteria for facility inspection, is the lack of consistent enforcement among the various FDA district field offices. In some cases, this lack of consistency creates agency "fiefdoms," where a district office is actually setting policy for the agency through its actions.

We have had episodes where inspections, which normally take a day or two, increasingly have taken up to a week or more at state-of-the-facilities, with inspectors using pharmaceutical manufacturing plant criteria to judge the operations of an animal feed plant. AFIA members have had inspectors enter facilities, remove documents for which they had no authority, and then provide those documents to non-government third parties for review. The list goes on and on.

FDA appears to be unwilling or unable to bring its district offices into line with Washington policy and programs. And, since it has not reined in these mavericks, private companies are spending thousands of dollars dealing with issues which should never arise under existing policy and regulation. Complaints to Washington fall on deaf ears.

A third area of inspection concern is the lack of expertise of inspectors and the quality and reliability of the resulting inspection. Without specific knowledge of the feed industry and without specific criteria developed by FDA for feed mill inspections, many inspection reports are useless. A solution to this problem may lie in state contracting of FDA feed mill inspections.

Currently, about 25 states have contracts under which FDA pays the state to conduct its Current Good Manufacturing Practices (CGMP) medicated feed plant inspections. The states have demonstrated they can do feed mill inspections in a much more timely fashion given the state agencies' greater familiarity with feed industry facilities and better inspector training.

State contracting also holds the potential for greater federal budget savings and enhanced overall inspection program performance since inspections are done more quickly given the

greater understanding of the industry and its facilities, and because state inspectors can inspect a greater number of non-commercial facilities as the FDCA demands, including on-farm mixers, integrated operations, etc. Individual company inspections are also more efficiently dealt with when it comes to dispute resolution, etc.

AFIA would be willing to work with FDA on a joint industry/FDA training program for its field inspectors. Failing a wholesale shift to state contracting, where inspectors are more knowledgeable about the feed industry, this approach would lead to inspectors who actually understood the production and operating processes unique to the feed industry. It would also save the government money to partner with industry on such training.

FDA/Industry Cooperative Approaches: In two recent cases, AFIA and FDA were able to cooperate on alternatives to potentially devastatingly expensive regulatory proposals which showed absolutely no promise of yielding any practical public health protection.

In one case, FDA announced its intent to propose a standard of zero salmonella in all feed products. The industry was stunned at this proposal for two very good reasons: First, it is practically impossible -- short of aseptic manufacturing, packaging, transportation and feeding systems -- to absolutely guarantee zero presence of an omnipresent microbe in any environment. Second, extant research shows no link between salmonella stereotypes which may be present in feed and those stereotypes isolated in the gut of animals fed those same feeds. In its own proposal documents, FDA said it was proposing the zero-salmonella program even though research indicated feed was not a vector for microbial infection of food producing animals. The basis for the intended proposal? Theoretical risk.

AFIA has had a microbial contaminant control program on the books since the late 1970s. Association staff and members met on several occasions with FDA personnel to provide research, practical industry experience and other source materials to show FDA the error of its intended proposal.

Finally, the agency acknowledged there was not sufficient science on which to base its zero-salmonella proposal, and the issue was referred to an independent scientific organization -- the U. S. Animal Health Association (USAHA) -- for review and recommendations.

A separate but similar situation occurred recently when FDA began the process, based again on theoretical risk -- this time the risk of disease resistance transfer to humans -- to restrict all new antimicrobial animal drugs to a prescription (Rx) status. For the feed industry, this essentially meant all feed mills using an antimicrobial could only do so on the order of a veterinarian, and would be subject to 24 separate and different state pharmacy laws and regulations, as well as those of FDA.

AFIA notified FDA in a 60-page document of the real-world implications of its Rx proposal to regulate a theoretical risk, including the cost to the feed industry and its farmer/rancher customers, the liability implications for feed companies and veterinarians, and the effect such a proposal would have on sponsor drug company research and development efforts.

The feed industry did not simply complain. It drafted, in concert with the other constituencies of the FDA Center for Veterinary Medicine (CVM), an alternative to the original FDA Rx

concept, that while preserving the role of the veterinarian in certain feed mixing decisions, obviated the need for a prescription status for feed products. Out of intense discussions with CVM over more than nine months was born the Veterinary Feed Directive (VFD) proposal. It has been agreed to by the agency and regulated industry, and, in fact, legislative language to authorize FDA's implementation of the VFD program is now pending on Capitol Hill. You want to help the feed industry, help us pass VFD.

What had all the earmarks of a regulatory nightmare for industry -- with no concomitant public health benefit -- has turned into a case study in how frank and honest discussions between the regulator and the regulated industry can lead to mutual agreement on a program, its goals and its measurable benefits.

Occupational Safety & Health Administration/Department of Labor

The feed industry, just as any manufacturing industry, is subject to the regulatory requirements of the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA). This means routine registration, inspections, etc.

The regulatory scheme which gives our industry the most problems today is OSHA's Hazardous Communication Program (HazCom).

HazCom was intended by Congress to provide adequate handling, storage and exposure warning information to workers handling federally defined "hazardous chemicals." The core of this warning or notification program is a series of documents called "Material Safety Data Sheets (MSDS). OSHA published a list of hazardous chemicals to be used as a guide for chemical manufacturers as to what substances required an MSDS.

The company is required to make a "hazard determination" and if a chemical is determined to be hazardous, the company is compelled to create an MSDS. The MSDS is conveyed with the "hazardous" chemical and required to be kept on-site and displayed for worker information.

The HazCom program has become extremely burdensome as chemical manufacturers have determined that an MSDS is required for nearly every substance imaginable. Chemical companies simply found it easier - and legally safer - to issue an MSDS than to go through the costly and time-consuming process of toxicological testing.

The result is that the average feed mill now must file, log and categorize 400-600 hundred MSDS forms received from supplier -- including soybean meal, grain dust and manufactured premixes. If companies were adhering to the intent of the rule, the number of ingredients used by a feed mill which may fit the definition of "hazardous" on which the mill would receive an MSDS, is likely closer to a dozen.

Further the rule holds that if a manufacturer "incorporate(s) a hazardous chemical into his mix using an inclusion level of 1% higher (0.1% for known carcinogens), or incorporate an item into the mix for which you hold an MSDS, then, in lieu of testing the new mixture as a whole, the mix is automatically deemed hazardous.

The net result is this: The vast majority of ingredients received by a feed mill but which carry an MSDS are no more "hazardous" than breakfast cereal; however, because the MSDS arbitrarily conveys a "hazardous" status, the feed industry should by all rights be generating an MSDS on every bag of feed it sells, requiring every farmer, rancher and poultry producer to file, log and categorize these forms.

AFIA has urged OSHA to mandate only substances for which there has been toxicological testing following OSHA standards be required to carry an MSDS. The MSDS should state that the "hazard" determination was met following these OSHA standards. Once the list of actual hazardous substances is created, manufacturers would retain those MSDSs, and dispose of the thousands of unnecessary forms. The manpower and system savings alone -- with no measurable affect on worker health and safety -- should justify this action by OSHA.

The feed industry is trying to mitigate this problem through legislation in the House as part of its Corrections Calendar. The legislation seeks to overcome the intransigence of OSHA when it comes to reasonable amendments to the HazCom program.

AFIA member experience also verifies OSHA inspection procedures are inconsistent and in need of serious revision. Over the years, AFIA has consistently used OSHA as the example of an agency where cooperation between the regulator and the regulated industry has resulted in reasonable rulemaking, solving real problems with measurable results.

However, field experience has taken those reasonable results and turned them upside down. Today, the average workplace OSHA inspection is an example of an overzealous, undertrained inspector spending more time on the quantity of violations than on the overall quality of his or her inspection. Our members routinely report nearly as much time spent renegotiating fines and penalties than time invested in the actual inspection. Invariably, the agency winds up dramatically lowering any fine which may be calculated, an indication most "violations" are technical in nature, more a device to generate revenue -- AKA, taxes -- than eliminate actual workplace risks to employees.

OSHA inspections should lead to the mutual benefit of employer and worker, i.e. the workplace will be safer, the environment more productive. In reality, inspection tend to focus on a list of "reportable offenses" leading to larger cumulative fines, and not on those infractions which could actually lead to workplace injury.

AFIA reiterates the offer made previously in our statement relative to FDA inspections. The industry would welcome a chance to partner with OSHA to ensure inspections are based upon criteria specific to the feed industry, that inspectors are in fact using valuable time and resources to rectify the actual, serious threats to worker health and safety. Again, this would result in a net cost savings to both the federal treasury and industry over time.

Environmental Protection Agency

It is difficult to imagine a federal agency more in need of regulatory housecleaning than the Environmental Protection Agency (EPA). Hamstrung by judicial rulings forcing it to operate under archaic standards, propelled by a "quantity-not-quality" mentality, EPA needs to take a

serious step backwards and view its mandate in the context of not only theoretical benefit, but the actual impact on the viability of production agriculture and agribusiness.

Rather than list a series of regulations which I believe should be eliminated because they cost too much to comply with, and they bear little real benefit, I will relate a "success" story in dealing with EPA. However, it was a "success" which took more than three years, and untold man hours and industry and government dollars to achieve. The frustration for business is that this victory should have been one of those nearly automatic administration decisions made by the agency upon review of AFIA's original petition.

In late 1994, EPA issued a final rule for a so-called small release exemption from filing Form R under Toxic Release Inventory (TRI) Sec. 313 requirements. This was a direct result of a petition filed by AFIA in February 1992, requesting EPA exempt feed and feed ingredient manufacturers (SIC Code 2048) from the reporting requirements of Sec. 313.

The final rule exempted facilities with releases of less than 500 lb. per year. With one signature, EPA Administrator Carol Browner removed an onerous and superfluous reporting and paperwork burden from 92% of the feed industry reporting facilities, facilities which previously had spent up to 100 hours per year complying with Form R reporting requirements.

AFIA said at the time: "After three long years working toward this end, we're pleased EPA responded to our concerns by providing relief for us, and other industries, from this costly and sometimes needless regulation." This exemption saves SIC Code 2048 approximately $42 million a year; EPA saves nearly $1 million in reduced processing costs. For the average feed mill, the savings exceeds $5,000 per year, a considerable sum for a small business.

(However, even with the exemption euphoria, SIC Code 2048 must still monitor and file a "short form" that continues to establish the exemption. In filing to report we don't pollute, it's akin to calling the highway patrol to let them know you didn't speed on your way to work.)

The rationale behind the exemption petition was twofold: First, TRI Sec. 313 (Form R) reporting is the basis for several federal and state "piggyback" regulations, including clean air, storm water and pollution prevention, all predicted on the fact that if you report under TRI Sec. 313 (Form R), you must automatically report under other programs.

Second, overall feed industry statistics showed that of reportable chemicals used by our industry, most were received, mixed and reshipped, with little or no residual. In fact, storm water data supplied for the feed industry showed that overall, feed industry facility runoff exceeded current federal safe drinking water standards.

The point here is that is should not have taken three years to active this exemption. Certainly a federal agency has the responsibility to weight data and err on the side of public health protection when it considers such petitions. However, the evidence was overwhelming, the data and science were unassailable, and the resolution of this petition process should have been more efficient. This program was the classic example of a bad law leading to a bad regulation.

Even if the petition took a year to approve, it would have saved the SIC Code 2048 facilities $84 million; EPA would have saved over $2 million, and each average feed mill would not have $10,000 to continue filling out superfluous forms. This does not count the two-year savings in man hours and industry resources had the petition been approved in a more timely fashion.

We have had similar recent success in getting EPA to review air emissions data under Title V reporting requirements, and its AP-42/PM-10 determinations. However, it took a Corrections Calendar bill in the House, and companion legislation in the Senate, thanks to Senator Grassley, to get EPA's attention long enough for them to review and accept the industry's data -- data that was better than its own.

CONCLUSION

I've attempted today to show a pattern of federal government regulatory behavior that works against small business competitiveness. Examples, I've given today dramatically demonstrate the following flaws in our current system:

- Inspection programs where inspectors are unfamiliar with the facilities and processes they are mandated to inspect, and are more interested in racking up fines rather than addressing actual problems;

- Inspection programs where individuals and regional field offices operate independently of Washington, setting policy and going beyond their legal authority;

- Regulatory proposals destined to fail because they are based upon theoretical, not real-world situations;

- Paperwork burdens and superfluous form filing that sucks up valuable corporate resources while providing no benefit, and

- A system where petitions for regulatory relief take years to achieve, despite overwhelming evidence to support those petitions.

I, like most small business owners, do not oppose federal regulation. Let me restate my fundamental premise about federal regulation of my business:

> **"Small business regulations must be practical, and they must achieve <u>real</u> public benefit."**

However, just as Congress has recognized that the days of passing unfunded mandates back to cities and states are over, so too must the federal government realize finally that business is not a bottomless well of money and manpower.

It is the height of folly to assume business can continually absorb layer after layer of federal regulation, when it is becoming increasingly obvious that not only does much of the regulation have no real effect on the overall quality of the average citizen's life in this

country, but it is seriously hampering American small business's ability to compete both here and abroad.

This situation is particularly dangerous for small businesses. In an industry where the words "consolidation" and "integration" are considered dirty words, it is imperative that the federal government work to unburden small business so that it can remain competitive.

What I and my industry ask is the federal government take a long, hard look at its programs and requirements. There's room for improvement, and industry is willing to help. It will take the ability to balance the costs versus verifiable benefits, and it will take and in-depth analysis of the true risks associated with theoretical situations.

It's time for a reality check.

The effect on jobs creation is the simple, unavoidable conclusion of this inane formula for disaster. If my business is successful, and I am generating a profit, then I have the necessary capital for growth and expansion. This means I hire more people at better wages to help continue my business's success. Conversely, if my company must dedicate increasing hours and resources to simply complying with the seemingly unending flow of regulations from Washington, D.C., then I am lucky if I can maintain my current markets. No expansion, no new jobs, no community development, just status quo. The choice here is obvious.

There is no magic solution. The challenge that must be accepted is for the Congress and the regulatory agencies to join to achieve the following realistic goals:

- Reduce the number of forms business must fill out;
- Shift a greater number of reports from mandatory to voluntary;
- Reduce the amount of information required on each form, and
- Reduce the universe of reporting companies to a reasonable, statistically, valid industry sample.

Mr. Chairman, Senator Coverdell, distinguished members of the Committee, I thank you for coming to Georgia, and for the opportunity to appear before you today. I offer my assistance and that of AFIA to work with you and other like-minded members of Congress to remove regulatory impediments to American competitiveness and job creation.

Chairman BOND. Thank you, Mr. Poitevint. I think you may have struck a nerve there.

Well, gentlemen, there are quite a lot of things that come to mind. I guess one of the things I was very interested in, and I think is very important, Mr. Sullivan, is your profit-sharing plan. I happen to think that for small businesses, getting the employee involved in the business so the employee has a stake in the business and treats that business as at least a partial owner, makes a tremendous amount of difference.

But you indicated that when they came in, the IRS wanted to look at your profit-sharing plan and you had to bring your plan administrator in. So complying with the law now is something your normal tax or bookkeeping staff cannot handle?

Mr. SULLIVAN. That is correct.

Chairman BOND. So how many employees—let us see, you have 30 employees?

Mr. SULLIVAN. We have 30 now but we have added 10 in the past 12 months. That plan runs around 15, 16 people.

They have changed the rules on this thing dramatically. When I started out, we had 10-year vesting, starting with the second year, 20 percent. I had it set up so that nobody could get ahold of that money until they were 59. Now it is changed that they are 100 percent vested in 5 years. Two years ago, one of my employees quit, he had $45,000 of my money. He took it and he is now a competitor. He used my money to go in competition with me. Had I known that 20 years ago when I started this thing, I never would have set that plan up. I did not set it up to have more people out there, gnats, flying around bothering me. But that is what the Federal Government has done for me on that program.

Mr. POITEVINT. Senator Bond, if I could comment. Our company had profit-sharing before all this stuff, and we had 5-year vesting and no matching and so forth. The history of this is that our CPA used to be able to do all the compliance. The laws got more complicated and then we hired a consultant whose company was in both the business of doing the investing and reviewing the law. The law got so hard for him, he quit that part of it. I now have a CPA for our small company to comply with the Federal regulations. Our CPA in Tallahassee, Florida, does part of it, our profit-sharing consultant in North Carolina does the compliance part of it and then we are no longer allowed to invest our own money, we have had to hire a professional manager in order to comply with that. For each one of our companies it is about $5,000 per year and we have a profit-sharing at four different businesses that we are involved in, and so for our company it is about $20,000, none of those fees we paid 10 years ago.

We have elected, because we think the benefit is important to our employees, to keep a profit-sharing plan. But in the new businesses that I have been involved in setting up, we have not been willing to deal with the regulatory paperwork to do it in some smaller businesses. We have encouraged people to do an IRA or you know, some other process. The problem with a real profit-sharing plan like Mike is talking about is that our Government has said to those of us who have small businesses that we want to make sure that it costs a lot for you to do this for your employees.

They have gone after some big bad folks who perhaps did horrible things, Ling-Temco-Vought, or somebody like that—or U.S. Steel, maybe that you have read about their problems—but most of us little people were just trying to do something for our employees. Our intentions were honorable, but we are the ones that are paying disproportionate costs.

Chairman BOND. I think that clearly if you are not able to set up a plan like this because of those regulations, that is at best counter-productive, if not punitive.

Mr. Tate, you have talked about the ADA and the problems with it. Frankly, I agree with you, I was one of the ones who worked with people with disabilities when I was Governor and I have worked for programs to help them get jobs, get better access, but I could not vote for that law because it was absolutely full of minefields and uncertainty.

You said it needs some specific changes. Can you either now or would you for the record, give us some of your thoughts on what kinds of changes will make this law serve the people it is supposed to serve, yet be workable for a small business?

Mr. TATE. Well, I do not know all of the things that it would take to make it work. What I would like to know is—you know, I understand the essence of the law, I am a Vietnam veteran and I have great sensitivity for those people that were injured and have to be in wheelchairs and stuff like that. So I am very sensitive to that. But to have a law—and when I asked the fire marshall, I said who do I talk to about this, he said—I didn't know where the ADA fell—he said well you have to call Janet Reno because it is in the Department of Justice. I mean they just put it so far out of reach. There ought to be something at more of a local level that we can get some information from.

But I guess ultimately and more broadly, I would urge you to try and restore some common sense to the Federal Government. It is like——

Senator COVERDELL. That may be an oxymoron.

[Laughter.]

Mr. TATE. Let me just give you one quick example of what we went through. We applied for a GSA schedule several years ago. The fact is we are a multiregional company but we are not a national company. OK? So I applied—we had a product that was Part 58 under the Telecommunications Section. There were a lot of small agencies that buy off the GSA schedule that cannot afford to go through a bid process or have a contracting officer, things like that. They would not grant us the ability to have a GSA schedule because we could not provide the product in 48 States. We could provide it in 10 or 15, maybe even 20, but not 48. So they said no.

I went to Senator Nunn, who at that time was on the Small Business Committee. He says I do not understand why they will not do that either, because I mean, there are a lot of companies out there, small businesses, that can perform functions faster and better than some of these big guys. At the time, there were like three major corporations that had GSA schedules on that particular part. I think BellSouth was one of them, Bell Atlantic and AT&T. There was not a single small business on the GSA schedule that could provide those kinds of services and products. Also at the end of the

fiscal years, the agencies would come up and say well we have money that is set aside to buy from small business and we cannot spend it because there are no small businesses on the schedule. It just did not make sense. So I guess if I could urge sort of a common sense or a bottom up approach.

I have a small little corporate support group. I have an accountant, a marketing person, a human resources person and I get them all together and I say look, we have 14 branches and I say these branches are the reason you have a job. We call ourselves a corporate support group, we do not think we are better than the branches, we think that they—that is who we work for.

The Federal Government could take the same idea with that, because instead of an arrogant approach to having us comply with these regulations, otherwise we risk going to jail—I mean you talk about these 401(k), we have had a profit-sharing plan since 1986. I used to be the plan administrator—not anymore. I mean, it got so risky for me when they were telling me all the penalties you could endure, so again, we have now an outside third party administrator handling it.

Chairman BOND. Thank you, Mr. Tate.

Mr. Poitevint, your discussion of the forms was very interesting. If you would follow up with our staff director, Louis Taylor, on those forms. That is maybe one of the things that the Small Business Committee can do, is see if we cannot get an answer for you on who thought up this form, why it is necessary and why you got so lucky being selected so often.

Mr. POITEVINT. Senator Coverdell's office and storage area would be very much smaller and not as much required because I have adopted a policy out of my love for Senator Coverdell; every new form I get I send to him so he has his own copy. I will tell you that the most recent one that came out 3 weeks ago from the Commerce Department called "How your business is organized," there is a form for that. They keep sending one. I hope maybe we will not have a Commerce Department very soon, that would be a good start.

But I will not only do that, I will be glad to come to Washington any time. I heard someone earlier say we ought to have a regulatory commission such as base closing, and I think that is the best idea I heard here. That is not a new idea. I was associated with a guy campaigning for a big office that believed in that. I think that is the right step. If we are going to close bases, we ought to be able to close some of these regulations.

Chairman BOND. Let me turn it over to Senator Coverdell.

Senator COVERDELL. I might comment that when we received this—everybody is anticipating another letter from Mr. Poitevint and another form—we have pursued each of those at each department and the defense mechanism in our agencies is beyond description. In other words, they will respond with a massive purpose, usually which is to supply the Government with data which they sell. So not only is Mr. Poitevint required to pay for the cost of filling out the form, the Government compensates itself by selling the data that they forced him to complete. It is an onerous, onerous exercise.

Chairman BOND. Why did I not think of that?

[Laughter.]

Senator COVERDELL. Well, it is all right, we have enough people in Washington that have already thought of it.

May I make another comment?

Chairman BOND. Please. I was going to turn it over to you because I apologize to our witnesses, we are running over a little bit, but it has been a very——

Senator COVERDELL. Not too bad, we are about 15 minutes over.

Chairman BOND. Not bad for government work.

Senator COVERDELL. Not bad.

When I began my work in public policies a number of years ago, these kinds of comments were often on the table from business. What has been remarkable to me, and our hearing has not reflected it and I apologize, we will make a way to cause this to happen—I have found of late that there is a new alliance. The comments we have heard from each of you and the previous panel is not just business any more. You might as well be the mayor of a town, a county commissioner, a school superintendent, a president of a small college or a university, it does not matter who walks through our office, this is the subject. You can almost give them a blank piece of paper that the grievance was inflexible, burdensome, not tolerant, arrogant, intimidating. I have even had people in my office whisper—whisper—about this kind of intimidation. They are actually afraid, and you have expressed it yourselves, they are afraid of threats and punishment. The idea of a partnership has gotten away from us, and now it is a bully boss.

So one of the things I think you all, as representatives of the business community need to explore is how many new partners you have with regard to dealing with government regulation. I mean, it is in every quadrant, it is not just business any more. When you have the president of a small college—one recently, I will leave it unnamed, came in, and this college is liberal arts, has a very creative teaching system, they do not use a classroom, they use living environments. The teacher has breakfast with the students or lunch, or they gather at a unique place. The college was at risk of being closed, did not meet the standards of the Education Department in terms of the way classes ought to be taught. It is a very fine institution, third oldest in the United States, had something to contribute to America. But they were under threat because they did not meet a rigid format.

So, I want to thank each of the panelists, current and the previous. This has been good testimony, it has stimulated, I think, the Committee. I want to thank the staff, ours and yours, for the arrangements, Georgia Tech, for the facilities. This is a very fine facility.

I hope that each of you will be willing to respond to additional questions and/or comments as we try to synthesize and process this. I will turn the meeting back to our Chairman for adjournment.

Chairman BOND. Thank you very much, Senator Coverdell, and thank you for all the work you and your staff have put in making this very informative and very interesting. Particularly, thanks to the panelists. I know from the testimony that you submitted that you put a lot of work into it before you got here. Your testimony

has been very good. We will leave the record open if there are further questions that perhaps some of our colleagues on the Committee may have. We will try not to burden you with too many forms. I promise we will not send you any requests for your quarterly profit and loss statements, but maybe a few simple questions that we might ask that would help us work more constructively on this, we may pursue.

I would like to say also that we are very grateful for those of you who are here as witnesses and spectators today; the Small Business Committee is interested if you have comments. We would appreciate it if you would write to us in Washington, D.C., at the Small Business Committee, it is 20510–2503, the 2503 will get it. We would appreciate any comments and suggestions that you may have.

I want to join with Senator Coverdell in expressing sincere thanks to Georgia Tech President Clough, Mr. Thompson and all the staff who made these fine facilities available. If you could not go to a fine engineering school and get a perfectly organized and microphoned hearing room, I do not know where you could go. I do appreciate the hospitality. It has been a pleasure to have the chance to hear from the panelists today and to have a chance to talk with each of you afterwards.

If there are any questions from the media, Senator Coverdell and I will be happy to meet them down here very briefly, and otherwise, we will be here for a few minutes before we have to go on. With that, my sincere thanks and this hearing is adjourned.

[Whereupon, at 11:50 a.m, the Committee was adjourned.]

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